

1                   UNITED STATES DISTRICT COURT  
2                   CENTRAL DISTRICT OF CALIFORNIA  
3                   WESTERN DIVISION

4                   - - -

5                   HONORABLE FERNANDO M. OLGUIN, DISTRICT JUDGE PRESIDING

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7                   UNITED STATES OF AMERICA,                 )  
8                   Plaintiffs,                                  )  
9    )  
10                   vs.    ) No. CR 23-0031-FMO-1  
11    )  
12                   FRANZ GREY,                                  )  
13                   Defendant.                                  )  
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15                   REPORTER'S TRANSCRIPT OF COURT PROCEEDINGS

16                   **EVIDENTIARY HEARING ON DEFENDANT'S MOTION TO SUPPRESS**  
17                   **EVIDENCE and STATEMENTS [54]**

18                   LOS ANGELES, CALIFORNIA

19                   WEDNESDAY, DECEMBER 6, 2023

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1 LOS ANGELES, CALIFORNIA; TUESDAY, APRIL 10, 2012

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(COURT IN SESSION AT 9:10 A.M.)

4 THE COURTROOM DEPUTY: Calling item number  
5 four, CR 23-00031-FMO: *United States of America v.*  
6 *Franz Grey.*

7 will counsel please make their appearances.

8 MR. MAGANA: Good afternoon, Your Honor.

9 Thomas Magana for the United States. I'm joined at  
10 counsel table by AUSA Cox McKenna.

11 THE COURT: Good afternoon.

12 MR. SNYDER: And good afternoon, Your Honor.

13 Charles Snyder on behalf of Franz Grey, who is present  
14 and currently in custody.

15 THE COURT: Okay. So we're here for an  
16 evidentiary hearing on defendant's motion to suppress.

17 Mr. Snyder, do you want to get started?

18 MR. SNYDER: Yes, Your Honor. And although  
19 it's our motion, it's the Government's burden. We would  
20 ask that the deputy go first. But of course, whatever  
21 order the court wants to go in.

22 THE COURT: That's fine. Why don't we have the  
23 deputy go first --

24 MS. MCKENNA: Your Honor --

THE COURT: -- it'll take the longest anyway.

1 MS. MCKENNA: Prior to the deputy taking the  
2 stand, may we quickly address a brief issue?

3 THE COURT: Sure.

4 MS. MCKENNA: We've turned over, in an  
5 abundance of caution, an item related to the deputy's  
6 personnel file from 2019. It was -- it's not anything  
7 that we believe is relevant in any way. Again, it was  
8 an item in which the finding was that the actions of the  
9 involved parties appeared to be reasonable.

10 Essentially, the officer saw that there was a  
11 warrant for a person attached to a trailer and briefly  
12 went in to see that individual was in the trailer. And  
13 the individuals who were in the trailer were briefly  
14 handcuffed, in part, because he said -- state one of  
15 them had a knife on him. And ultimately, the only  
16 reason that we turned it over is because there was an  
17 opinion that the reason for handcuffing that person and  
18 the reason for placing him in the backseat should have  
19 been documented.

20 However, again, the actual finding was that the  
21 actions of the officers was reasonable. The -- the --  
22 it's the Government's position that this incident from  
23 four years ago, of which the officer essentially has no  
24 recollection, has no relevance whatsoever to any of the  
25 issues at hand. And, of course, it was established case

1 law that the -- the witness can't be impeached by  
2 extrinsic evidence on the collateral matter.

3 So it's the Government's position that the  
4 incident from 2019 should not be allowed to be brought  
5 up on relevance grounds in cross-examination.

6 THE COURT: Okay. Thank you.

7 MR. SNYDER: Yeah, briefly. So I have exhibits  
8 with me. I can just represent to you what they say.  
9 The Government was aware of this handful of material no  
10 later than November 6th. They produced it to me for the  
11 first time yesterday afternoon. I'm not seeking a  
12 continuance of the hearing, but my first point is that:  
13 If this was the Government's position, the Government  
14 has long lost the opportunity to make this argument,  
15 number one.

16 Number two, I think that the court will find  
17 that this complaint is in fact extremely relevant  
18 because what actually happened here was that Deputy  
19 Francisco claimed that there was a warrant associated  
20 with an RV. There wasn't. The warrant was associated  
21 with a person who lived at a different residence.

22 And you'll see this is part of the findings  
23 that were given to me two hours before the hearing  
24 today. He then put the people in the back of a car  
25 without a basis. He then searched their camper for ten

1 minutes. And he said that they lied about it and then  
2 was found, along with his trainee, to have inaccurately  
3 documented it.

4 So the information here is extremely relevant.  
5 Also, there's not a jury. The court is the factfinder.  
6 There are no rules of evidence. If the court finds that  
7 it's not relevant, then, of course, it won't consider  
8 it. But I think that you will see then, in the context  
9 of the examination, it's quite relevant and also, the  
10 issue of timeliness.

11 MS. MCKENNA: Your Honor, I did want to -- to  
12 make some corrections in the facts. There were no  
13 findings that anything was inaccurate. The -- our  
14 finding is that the officers acted appropriately. The  
15 only -- the only comment was that the reason for this --  
16 for the home detention should have been documented.  
17 It's only an issue as to documentation.

18 With regards to the *Henthorn* disclosure, we  
19 reviewed this. We determined that it was not relevant.  
20 We turned it over in an abundance of caution. When the  
21 Defense asked additional questions about the incident,  
22 as a professional courtesy, we put in a subpoena for the  
23 report, which is not something that is generally  
24 available to us.

25 I asked first as a courtesy from the sheriff's

1 to be able to pick it up today so that I could get it to  
2 counsel prior to the hearing. And then we turned it  
3 over as soon as it was made available to us, but again,  
4 this --

5 THE COURT: You only knew about it today? You  
6 only got it today?

7 MS. MCKENNA: We turned -- we -- we -- I was --  
8 I reviewed the report. I prepared a summary of the  
9 report, which I believe was more than adequate to -- to  
10 reflect any potential relevance.

11 THE COURT: You know, summary of reports,  
12 that's -- that's what you've determined is relevant. I  
13 don't understand why you guys do that all the time.  
14 Just give them the report. What you think is relevant  
15 and what he thinks are relevant are two different  
16 things.

17 MS. MCKENNA: Your Honor, these items were not  
18 available to us. They're not provided to us in  
19 discovery. This is something that is only potentially  
20 available to us by subpoena. So we did turn it over  
21 what was -- we believe was relevant and to clarify --

22 THE COURT: So you're telling me that -- that  
23 you're working with the sheriffs. They're the officers  
24 that you have to rely on to prove this case. But if you  
25 want a copy from something that relates to the officer

1 or the case in any way, they -- your own investigating  
2 officers in this particular point is the L.A. County  
3 Sheriffs. Your investigating officers won't give it to  
4 you? You have to subpoena your own officers to get your  
5 own information for the case?

6 MS. MCKENNA: Yes, Your Honor, with regards to  
7 any personnel material, they will not provide those  
8 materials to us. In particular, for personnel materials  
9 related to an incident that has no bearing on the case  
10 at hand and that is many years old. I did previously  
11 make a request and was told that I had to put in a  
12 subpoena.

13 THE COURT: And -- and -- but you waited a  
14 month to tell Defense counsel?

15 MS. MCKENNA: I -- I don't --

16 THE COURT: Why didn't you tell him earlier so  
17 he could put in a subpoena?

18 MS. MCKENNA: I -- Your Honor, I don't --  
19 I'm -- I'm not sure about the accuracy of that date. We  
20 did do a review within the last couple weeks, and what  
21 we wanted to actually speak to the officer before  
22 turning over any of the information to make sure that  
23 everything was accurate and to make sure that there was  
24 nothing else that we should conclude -- we should  
25 include that --

1                   THE COURT: But wait, it's -- the officer  
2 doesn't have any say over whether stuff in his -- I  
3 mean, they can certainly object to whatever's in their  
4 personnel file, but HR -- the HR department that has say  
5 over what's in the -- in the personnel file; right?  
6 We're talking about personnel documents.

7                   MS. MCKENNA: Understood, Your Honor.

8                   THE COURT: Okay.

9                   MS. MCKENNA: The officer may have had  
10 additional information. For example, the -- the actual  
11 report does not indicate which officer wrote the  
12 documentation.

13                  THE COURT: See, all of that just goes to the  
14 weight. Everything you're saying, I don't disagree.  
15 It -- it's fine. Those are -- I totally see your point,  
16 but it just goes to the weight, not to the  
17 admissibility. But I'm just troubled because I -- you  
18 know, it's -- it's this thing where it appears that, you  
19 know, you -- you unilaterally decide -- I mean, we're  
20 talking about work product; right?

21                  What you see in a document and what you see in  
22 a file, that's your own work product and your own  
23 assessment of what you think is relevant. You have no  
24 idea how opposing counsel can use that and frame an  
25 argument and frame a cross-examination and use that kind

1 of evidence.

2 That's the problem I'm having here is that  
3 you're making that determination and then you waited  
4 until the last minute. You should have at least given  
5 defense counsel the opportunity to serve a subpoena for  
6 the information. And you could have said, "Look, I  
7 don't know whether this is relevant or not, but it  
8 appears like it might be. So I'm going to let you know,  
9 and you can serve the subpoena."

10 And I would have signed off on the subpoena and  
11 we -- he'd have the information much sooner than two  
12 hours, but it is what it is.

13 Let's just get started. Go -- go ahead.

14 MR. SNYDER: Just very briefly -- and I agree  
15 with you -- because there's a lot to cover. So I want  
16 to get started. I will say that I did bring the  
17 November 6th e-mail, which starts: "In addition to the  
18 item you mentioned, there was one item from a deputy's  
19 personnel file that we intended to disclose in an  
20 abundance of caution and can do so once a protective  
21 order is filed."

22 We then agreed through a protective order --  
23 and one was entered in. It wasn't produced to me until  
24 24 hours before the hearing. And the actual underlying  
25 report was produced as I was walking over. I'm not

1 asking for a continuance, but I just want to be real  
2 clear about what the record is. And I'm happy to file  
3 these e-mails after the hearing.

4 THE COURT: No, it's not necessary. I mean,  
5 look. It's just -- I just need you guys to be up front,  
6 turn everything over. And you know, it's just --  
7 it's -- turn over as soon as you have it. And let's  
8 move forward.

9 Okay. Let's get the officer on the stand.

10 MR. SNYDER: Thank you, Your Honor. I guess I  
11 would call Deputy Clint Francisco, who has already  
12 testified by way of declaration.

13 **GOVERNMENT'S WITNESS, CLINT FRANCISCO, SWORN.**

14 THE COURT: Can you give that folder to my  
15 clerk -- can you give it to the clerk.

16 THE COURTROOM DEPUTY: Thank you.

17 THE WITNESS: Absolutely, uh-huh.

18 THE COURTROOM DEPUTY: Please state your name  
19 for the record.

20 THE WITNESS: My name is Clint Francisco.

21 MR. SNYDER: May I proceed?

22 THE COURT: Go ahead.

23 **CROSS-EXAMINATION**

24 BY MR. SNYDER:

25 Q Deputy Francisco, I want to start with a few

1       questions about writing police reports; okay?

2       A           Yes.

3       Q           You've been -- you've been with the sheriff's  
4                   department for a little over 11 years; right?

5       A           Correct.

6       Q           And during that time you've received training  
7                   on how to write reports?

8       A           Yes.

9       Q           You've also trained other deputies on how to  
10                  write reports?

11      A           Yes.

12      Q           And you understand that police reports serve a  
13                  number of important purposes; right?

14      A           Yes.

15      Q           And they're an important part of the judicial  
16                  process; right?

17      A           Yes.

18      Q           And for that reason, reports are supposed to be  
19                  unbiased; right?

20      A           Yes.

21      Q           They're supposed to be accurate; right?

22      A           Correct.

23      Q           They're supposed to be complete?

24      A           Yes.

25      Q           And they're supposed to contain all pertinent

1 information; right?

2 A Yes.

3 Q Pertinent information can include information  
4 that obviously helps to develop your case; right?

5 A Yes.

6 Q But pertinent information also includes  
7 information that might be harmful to your case; right?

8 A Yes.

9 Q Pertinent information can include information  
10 that makes you look bad; right?

11 A No.

12 Q If it's pertinent to the case and it makes you  
13 look bad, should it go in the report?

14 A If -- when I write a report, I'm not writing  
15 the report about myself. I'm writing the report about  
16 the crime and evidence of the crime.

17 Q Sure. But if you did something wrong, right,  
18 in the course of investigating, that would be something  
19 that you should put in the report; right?

20 A That's not pertinent to the evidence of the  
21 crime.

22 Q So you're saying that if you did something  
23 wrong --

24 MR. MAGANA: Objection, Your Honor. This is  
25 vague and calls for speculation.

1                   THE COURT: Overruled.

2 BY MR. SNYDER:

3 Q                 So anything that you do that's wrong, you don't  
4 put in the report; is that what you're saying?

5                   MR. MAGANA: Objection, Your Honor. This  
6 misstates the witness's testimony.

7                   THE COURT: Overruled.

8                   THE WITNESS: I don't -- when I write my  
9 reports, I write the true events of what transpired with  
10 the evidence that supports the crime which I arrested  
11 the person for. So I don't write about my personal  
12 actions. It's the elements of the crime.

13 BY MR. SNYDER:

14 Q                 So it's your testimony that pertinent  
15 information doesn't include information about your  
16 investigative activities; is that right?

17 A                 I don't understand the question.

18 Q                 You said that when you write reports, you don't  
19 include anything about what you personally do; is  
20 that -- is that what your testimony is?

21                   MR. MAGANA: Objection, Your Honor. This,  
22 again, misstates the testimony.

23                   THE COURT: Overruled.

24                   THE WITNESS: You just changed what you just  
25 said, though. What I said is, I write the pertinent

1       facts in the report that are needed for prosecution  
2       purposes.

3       BY MR. SNYDER:

4       Q       Well, let me ask you this: Does pertinent  
5       information include information about your investigative  
6       activities? Like, what brought an incident to your  
7       attention, what you were told about an incident, what  
8       you observed, what actions you took; does it include  
9       that?

10      A       Yes.

11      Q       Okay. And those are your activities; right?

12      A       Yes.

13      Q       And so if you did something wrong during that  
14       process, would it go in your report or would it not go  
15       in your report?

16      A       If I -- I -- I don't understand that question.  
17       That makes no sense to me.

18      Q       No problem. All right.

19               Let's talk briefly about warrant affidavits.  
20       And just so we're on the same page, when I refer to a  
21       "warrant affidavit," I mean a sworn statement of  
22       probable cause in a warrant packet.

23               You understand that; right?

24      A       Yes.

25      Q       You agree that warrant affidavits, like arrest

1 reports, are also important judicial documents; right?

2 A Yes.

3 Q When you submit an affidavit, you're asking a  
4 judge to do something significant and meaningful; right?

5 A Yes.

6 Q And for that reason, it's important that your  
7 affidavits are accurate; right?

8 A Yes.

9 Q And it's important that they're precise; right?

10 A Yes.

11 Q Obviously, that means you can't lie in a  
12 warrant affidavit; right?

13 A Yes.

14 Q It also means that the affidavit should be  
15 drafted with some care; right?

16 A Yes.

17 Q So that every part of it is factually accurate;  
18 right?

19 A Yes.

20 Q And not misleading?

21 A Correct.

22 Q Let's talk briefly about declarations: You  
23 submitted a declaration in this case; right?

24 A Yes.

25 Q You understand that a declaration, like a

1 warrant affidavit, is a sworn statement?

2 A Yes.

3 Q It's submitted under penalty of perjury; right?

4 A Yes.

5 Q And you understood that the declaration you  
6 submitted in this case was prepared for a judge; right?

7 A Yes.

8 Q And that he was going to read your declaration;  
9 right?

10 A Yes.

11 Q And take it into account when deciding a  
12 suppression motion; right?

13 A Yes.

14 Q I'm going to talk really briefly about how your  
15 declaration was prepared.

16 You didn't write your declaration in this case  
17 entirely on your own; right?

18 A Correct.

19 Q The declaration was mostly written by the  
20 prosecutor; right?

21 A Yes.

22 Q Now, generally, the way that this works -- and  
23 you tell me if this is what happened in this case -- is  
24 that you have a meeting with the prosecutor or the  
25 agent, and you tell them what happened. And then at

1 some point after you have those meetings, the prosecutor  
2 sends you a first draft; is that what happened here?

3 A Yes.

4 Q Did you have meetings or did you have phone  
5 calls?

6 A We had meetings.

7 Q How many meetings?

8 A I think we had two.

9 Q Was the agent there?

10 A Yes.

11 Q Was the agent taking notes?

12 A Yes.

13 Q Now, at some point, the prosecutor wrote a  
14 first draft of your declaration; right?

15 A Yes.

16 Q And he asked you to review it?

17 A He did.

18 Q And you did review it; right?

19 A I did.

20 Q You had an opportunity to make changes to it?

21 A I did.

22 Q Did you make any changes?

23 A Yes, I did.

24 Q What were the changes?

25 A I don't remember which changes. We were on the

1 phone, and he made those changes as we were talking.

2 Q And when he sent it to you and he asked you if  
3 you had any changes, did he say, "Don't write down your  
4 changes, call me instead"?

5 A I don't -- I don't remember exactly what he  
6 said.

7 Q How did you communicate with the prosecutor?  
8 Did you communicate with him by e-mail, by phone, or by  
9 text message?

10 A By phone.

11 Q By phone only?

12 A Um, it would be between the agent and like --  
13 kind of, like a three-way. He contacts the agent, and  
14 then he -- and then the agent would contact me.

15 MR. MAGANA: Objection, Your Honor. Relevance.

16 THE COURT: Overruled.

17 BY MR. SNYDER:

18 Q And how'd you communicate with the agent?

19 A Via cell phone.

20 Q Any written documents, e-mails, text messages?

21 A No. It was via -- just talking, and she'd tell  
22 me where to go and stuff like that.

23 Q Okay. So at some point, obviously, you -- you  
24 eventually sign the declaration; right?

25 A Yes.

1 Q And when you signed it, that was only after you  
2 had a chance to talk with the prosecutor, review it,  
3 make changes to the declaration; right?

4 A Yes.

5 Q Now, there are some exhibits attached to your  
6 declaration. For example, Exhibit C is a warrant  
7 abstract.

8 Did you provide any exhibits to the prosecutor?

9 A No.

10 Q Did they ask you for any documentary support  
11 for any of the claims?

12 A No.

13 Q You didn't bring any additional documents or  
14 exhibits to this hearing; right?

15 A No.

16 Q All right. So I want to turn now to the  
17 declaration that you filed in this case. And I actually  
18 want to start with some of the things discussed in  
19 paragraph 2, where you talk about your history with the  
20 department. I'll include some things that aren't in  
21 there. But really briefly, you started in the training  
22 academy in October 2012; right?

23 A Yes.

24 Q And after you left the training academy, you  
25 were elevated to the custody division; right?

1 A In -- it wasn't October. I think it was in --  
2 September is when we started.

3 Q And once you were elevated to the custody  
4 division, you spent 20 months at North County  
5 Correctional Facility, Castaic; right?

6 A Yes.

7 Q And then after 20 months at Castaic, you were  
8 elevated to the patrol division; right?

9 A Patrol training, yes.

10 Q And as the name suggests, patrol is riding  
11 around in a marked car; right?

12 A Yes.

13 Q Responding to incidents that are in the patrol  
14 area?

15 A Yes.

16 Q And you have, what? One or two-man teams?

17 A Um, in a training unit, it's a TO and a  
18 trainee, at first.

19 Q So is that -- it's -- you start off with a  
20 training officer, and then you're on your own; is that  
21 what I'm hearing?

22 A Yes. And then you ride solo. And then we have  
23 county units, too, that are two-man units.

24 Q Got it. In 2019, you were promoted again from  
25 patrol deputy to training officer; right?

1 A Yes.

2 Q And you were supervising junior officers when  
3 you were in that role; right?

4 A Yes.

5 Q And you were training officer for three years;  
6 right?

7 A Two years.

8 Q And then it says in your declaration that in  
9 2022 you joined something called the "special assignment  
10 team"; right?

11 A What year?

12 Q In 2022.

13 A I don't remember the exact year. I -- I know I  
14 did it for like a year and seven months.

15 Q Well, I'll tell you that you filed your warrant  
16 affidavit on December 16th; does that sound right?

17 A Yes.

18 Q And in that time, you said that in a little  
19 over seven months with the special assignment team, you  
20 had done a certain number of drug and gun  
21 investigations. So it must have been in 2022; does that  
22 sound right?

23 A Over the course of my career, not just over --  
24 in that time frame.

25 Q Okay. Well, we can go and look at it. Do you

1 know when you joined the special assignment team?

2 A Um, like I said, I didn't know exact -- exactly  
3 what year it was. I -- I'd have to look back in my  
4 personal records to find the exact date.

5 Q Okay. And then the year, do you know?

6 A Like I said, I did it for about a year and  
7 seven months. So go back from today for a year and  
8 seven months because I'm at a new assignment right now.

9 Q Got it. Okay.

10 As the name suggests, the special assignment  
11 team handles special assignments; right?

12 A Yes.

13 Q And those are assignments that are more  
14 complicated or dangerous or higher priority than routine  
15 patrol assignments; right?

16 A No.

17 Q What makes them special?

18 A It's just that we don't get any calls for  
19 service.

20 Q You don't get calls for service, but you have a  
21 six-man team; right?

22 A Yes.

23 Q And you work at night; right?

24 A We work at night, yeah.

25 Q In your declaration you described a special

1 assignment team as "a crime prevention unit"; right?

2 A Yes.

3 Q And I'll tell you for now, at this point, in  
4 your warrant affidavit, you said that in a little over  
5 seven months with the special assignment team, you've  
6 been involved in approximately 50 drug investigations;  
7 right? That's what you said?

8 A Yes.

9 Q And during that same time period, you were  
10 involved in approximately 35 gun investigations; right?

11 A Yes.

12 Q So 85 drug or gun investigations in a little  
13 over seven months with the special assignment team;  
14 right?

15 A Year and seven months.

16 Q Well, I'm going to ask you to turn to what's  
17 been marked as Exhibit 2.

18 It's in the -- the binder right next to you.  
19 Exhibit 2 is a -- a search warrant packet. And I guess  
20 maybe if we just stop briefly at the front page...

21 And I'm reading here now. And -- and you can  
22 read along. I'm down near the bottom of the front page:  
23 "The search warrant and the incorporated affidavit  
24 were" -- sorry.

25 "The search warrant and incorporated affidavit

1       were sworn to as true and subscribed before me on this  
2       17th day of December 2022, at 48 hours"; right?

3                  That's what that says?

4       A           Yeah, I see that at the bottom.

5       Q           Okay. And then if we go to the third page of  
6       Exhibit 2 -- and let's see, one, two, three, four -- 5th  
7       line down. I'm going to read, and you can just read  
8       along with me:

9                  All right. "Now, your fine as currently  
10      assigned to the special assignment team at Santa Clarita  
11      and has been so assigned for over seven months. During  
12      this time, your fine has investigated and has assisted  
13      in investigating approximately 50 drug-related arrests  
14      and 35 firearm-related arrests."

15                  Is that -- that's what you wrote; right?

16       A           Yes.

17       Q           Okay. You were a member of the special  
18      assignment team on December 16th, 2022; right?

19       A           Yes.

20       Q           Let's talk about what happened that day. So on  
21      December 16th, after you went on duty, you got a call  
22      from Deputy Haven; right?

23       A           Yeah.

24       Q           Deputy Haven was a patrol deputy in  
25      Santa Clarita; right?

1 A Yes, he's a training officer.

2 Q And he told you about a report of criminal  
3 activity; right?

4 A Yes.

5 Q And -- and in your declaration on that  
6 paragraph 4, you refer to it as a "call about an  
7 embezzled U-Haul truck"; right?

8 A Yes.

9 Q Now, according to your declaration -- and,  
10 again, I'm at paragraph 4 -- you say that Deputy Haven  
11 gave you several pieces of information during this call;  
12 right?

13 A Yes.

14 Q First, he said that the missing U-Haul had been  
15 initially reported 11 days earlier; right?

16 A I -- I don't remember the exact time on that.

17 Q If you want to refresh your recollection,  
18 that's fine. This isn't a memory test. This is  
19 paragraph 4(A) of your declaration, which is Exhibit 1  
20 in the binder in front of you. And if you want to take  
21 a look at it and let me know if that's helped to refresh  
22 your recollection when you're done.

23 A That was in this first paragraph?

24 Q Yeah, paragraph 4(A).

25 A I've never used one of these before. So you're

1 talking on the first page?

2 MR. SNYDER: Your Honor, can I --

3 THE COURT: From the very second page. It's --  
4 he showing the second page in the -- in the book. It's  
5 the very first exhibit.

6 BY MR. SNYDER:

7 Q Does that refresh your recollection that one of  
8 the things he told you was that the U-Haul was initially  
9 reported 11 days earlier on December 5th?

10 A It doesn't say 11 days. It says the date of  
11 November 14th.

12 So I don't know if I have the wrong paragraph,  
13 but...

14 THE COURT: He's saying that the call came in  
15 on December 5th --

16 THE WITNESS: Okay.

17 THE COURT: -- but you didn't go to the actual  
18 house till December 16th. That's 11 days later. That's  
19 what he's asking you.

20 THE WITNESS: Oh, yeah. That's correct. And  
21 that's when I went out there, but --

22 THE COURT: Okay. Well, that document doesn't  
23 say that.

24 THE WITNESS: Well --

25 THE COURT: But you can -- you can do the --

1 the calculation.

2 THE WITNESS: So from --

3 MR. SNYDER: Yeah, that --

4 THE COURT: That's what -- that's what he's  
5 getting at.

6 BY MR. SNYDER:

7 Q Yeah, sorry. What I was referring to is the  
8 part where you wrote: "On December 5th, 2022,  
9 Freddy Moreno, manager of the U-Haul rental office,  
10 called to report this embezzled truck"; right?

11 A Yes.

12 Q So one of the things that Haven told you was  
13 that this had been reported originally 11 days earlier  
14 on December 5th; right?

15 A Like I said, I -- I wasn't -- he -- I wasn't  
16 aware of that original report.

17 Q Well, it's in your declaration.

18 A After the fact. You're asking me if I knew it  
19 at that second, but I still had to do my own  
20 investigation when I did the follow-up on it.

21 Q Sorry. I'm asking what it is that Deputy Haven  
22 told you on December 16th when he called you? And what  
23 you wrote in your declaration was that on  
24 December 16th, the first thing he said was that the  
25 U-haul was originally reported stolen 11 days earlier;

1 right?

2 That's what you wrote?

3 A That's when the original report was done, yes.

4 Q And that's what Deputy Haven told you; right?

5 A Yes.

6 Q Okay. And what he also told you was that, at  
7 the time, the U-Haul manager, Freddy Moreno, had placed  
8 that call; right?

9 A No. That was found out later, but compiled  
10 into the declaration.

11 Q Sorry. So this section of your declaration,  
12 which you said under oath is what you were told, that  
13 includes information from both before and after that  
14 date; is that what you're saying?

15 A No. So -- after the investigation there's a  
16 detective on the case too that looked up other calls for  
17 service and everything like that. And that's where that  
18 information was told. And that's how this went into the  
19 declaration.

20 Q Sorry. Just to go back. I'm reading from  
21 paragraph 4 now. And this is -- we went over how the  
22 declaration was prepared and -- and you signing it. You  
23 said: "On December 16th, 2022, I received a call from  
24 Deputy Daniel Haven who works in patrol during daytime  
25 hours"; right? That's what you wrote?

1 A Yes.

2 Q And then you wrote that: "He informed me that  
3 he had responded to a call earlier in the day regarding  
4 an embezzled U-Haul truck and relayed the following";  
5 right?

6 That's what you wrote?

7 A Yes.

8 Q Okay. And then the next sentence was: "On  
9 December 5th, 2022, Freddy Moreno, manager of the U-Haul  
10 rental office, called to report an embezzled 26-foot  
11 U-Haul truck."

12 That's what you wrote; right?

13 A Yes.

14 Q Are you saying that that's not true?

15 A No.

16 Q Well, maybe I don't understand your testimony.  
17 Because you're saying that some of the information was  
18 not relayed to you on that date and some of it you found  
19 out later through a further investigation. I -- I'm not  
20 clear. Maybe you can explain.

21 A As I explained, we have a detective in the case  
22 that looked up previous calls for service. At the time,  
23 Deputy Haven did tell me what is written in the  
24 affidavit. And that's the information that I do have,  
25 and that's what's in the declaration.

1 Q Okay. So what he told you was that on  
2 December 5th, Freddy Moreno, from U-Haul, called to  
3 report this embezzled U-Haul truck; right?

4 A Yes.

5 Q And during that call, Mr. Moreno provided  
6 Mr. Grey's name; right?

7 A Yes.

8 Q And he provided Mr. Grey's listed address;  
9 right?

10 A Yes.

11 Q And he said that the truck had been missing for  
12 some time at that point already on December 5th; right?

13 A Yes.

14 Q And he said that voicemails and calls to  
15 Mr. Grey had gone unreturned; right?

16 A Yes.

17 Q In that initial report, Mr. Moreno did not say  
18 anything about meth; right?

19 A Correct.

20 Q And in response to that report, nobody was  
21 dispatched for the U-Haul at all; right?

22 A That call for service, I'm not sure if they  
23 went to that one or not.

24 Q Well, I'll leave it for now. We can come back.  
25 There's a report attached as Exhibit 5 -- as Exhibit A

1 to your declaration.

2 I'll ask this question: Was the special  
3 assignment team called out on that day?

4 A No.

5 Q The second thing that Deputy Haven told you  
6 according to your declaration, was that U-Haul called  
7 back again on December 16th, that date; right?

8 A Yes.

9 Q And once again, the call was placed by the same  
10 Mr. Moreno; right?

11 A Yes.

12 Q And once again, he said that his truck was  
13 missing; right?

14 A Yes.

15 Q He provided Mr. Grey's name; right?

16 A I'm not sure if he provided his name or not.

17 Q I'll just say that paragraph 4(B) of your  
18 declaration says what it says; right? If it says that  
19 he provided the name, he provided the name. And if not,  
20 not. Can we agree on that?

21 A Do you want me to check to see if it's in  
22 there?

23 Q Sure. I can actually read it to you. So in  
24 your declaration, which you signed: "On December 16,  
25 2022, LASD dispatch had received a call for service from

1       U-Haul stating that an individual claiming to be  
2       Mr. Grey's neighbor had reported the presence of the  
3       U-Haul truck at 33570 Bouquet Canyon Road." And it goes  
4       on and on.

5                   So it identified Mr. Grey, again; right?

6       A           Yes.

7       Q           This is a lot of the same information as the  
8       original call that had been made 11 days earlier; right?

9       A           Yes.

10      Q           But this time, there was a new piece of  
11       information; right? What Mr. Moreno reported on this  
12       day was that a neighbor had provided additional  
13       information; right?

14      A           Yeah.

15      Q           And what that neighbor supposedly said to  
16       Mr. Moreno was that Mr. Grey was making meth in the back  
17       of the U-Haul; right?

18      A           Yes.

19      Q           Now, to be clear, that report was not made  
20       directly to law enforcement; right?

21      A           It was reported in that call for service on  
22       December 16th.

23      Q           And that call was placed by Mr. Moreno; right?

24      A           Yes.

25      Q           So, it was kind of a second-hand report

1 received through Mr. Moreno?

2 A Yes.

3 Q And nobody from the sheriff's department talked  
4 to this -- this person who might be a neighbor on that  
5 day; right?

6 A No.

7 Q That person, as far as you knew, was anonymous;  
8 right?

9 A Yes.

10 Q Nonetheless, in response to that second report,  
11 which now included the meth tip, officers were  
12 dispatched out to go get the truck; right?

13 A Yes.

14 Q And, in fact, the investigation was sent to the  
15 special assignment team; right?

16 A No.

17 Q Did the special assignment team not report in  
18 response to that call?

19 A No -- that -- we -- I got the information from  
20 Deputy Haven.

21 Q Right. And he asked you to take the call;  
22 right?

23 A No. He just told me about the call.

24 Q Okay. And you then determined that that was an  
25 appropriate matter for the special assignment team?

1 A It's something for us to look into, yes.

2 Q All right. I want to turn briefly now and look  
3 at your report, which I've included as Exhibit 3 in that  
4 binder. For the court's reference, this is Exhibit 29  
5 for the motion. I gave him different hearing exhibit  
6 numbers, which may not have been helpful.

7 So once you've turned to Exhibit 3 in that  
8 binder, let me know.

9 A I'm there.

10 Q Okay. So we talked earlier about  
11 report-writing; right?

12 A Yes.

13 Q And how it's important to include pertinent  
14 information in your reports; right?

15 A Yes.

16 Q Can you tell me where the tip about a possible  
17 mess -- meth lab is mentioned in your report?

18 A It's in my report.

19 Q Where?

20 A It was in reference to that call for service.

21 Q Do you say the word "meth"?

22 A Meth?

23 Q Sorry, I'm asking you, in your report that you  
24 wrote, you're saying -- is -- am I -- am I missing it?  
25 In -- in Exhibit 3, this is the report that you wrote

1 the day after.

2 Do you say that you got a tip about a possible  
3 meth lab in that report?

4 A No.

5 Q No. Now, it's not your position that that meth  
6 lab tip was irrelevant to your investigation; right?

7 A Correct.

8 Q In fact, it's mentioned repeatedly in the  
9 declaration that you filed in this case; right?

10 A Yes.

11 Q You mentioned it in paragraph 4(B), which we  
12 were just looking at; right?

13 A Yes.

14 Q You mention it in paragraph 8, I'll represent  
15 to you. Any -- any reason to dispute that?

16 A No.

17 Q You mentioned it in paragraph 10(D); right?

18 A I'd have to double-check to make sure it was  
19 there.

20 Q Well, it says what it says. You mentioned it  
21 in paragraph 10(E), too. Any reason to dispute that?

22 A If you want me to double-check it, I will.

23 Q You can look. Feel free. 10(E).

24 I can read it for you. It says: "We received  
25 a tip that narcotics were possibly being manufactured at

1       this residence"; see that?

2       A           Yes.

3       Q           But if someone were to read your report, they  
4       wouldn't see this tip anywhere; right?

5       A           No.

6       Q           And if it had some significance, in terms of  
7       the decisions that you made or the actions that you  
8       took, that would be hidden too; right?

9       A           No.

10      Q           I want to turn now and look at the warrant  
11       affidavit that you filed, which is Exhibit 2. And --  
12       and again, tell me when -- when you've had a chance to  
13       look at it.

14      A           You want me to look at it?

15      Q           Well, I can just ask you the question.

16      A           Yes, please.

17      Q           In your warrant affidavit, you only said that  
18       you got a report about embezzled U-Haul; right?

19      A           Yes.

20      Q           You don't say anything about any tip regarding  
21       a supposed meth lab; right?

22      A           Correct.

23      Q           And so if that fact had some significance, in  
24       terms of any decisions that you made or actions that you  
25       took, that wouldn't be known to someone who was reading

1 the affidavit; right?

2 You're looking at the prosecutor and giving him  
3 a facial expression. What did you mean by that?

4 A Oh, I should look at you. I'm sorry. I don't  
5 understand that question. Can you rephrase it?

6 Q Yeah, sure. If the fact of the tip had some  
7 significance, in terms of the actions that you took or  
8 the decisions that you made, that would not be known to  
9 someone reading the affidavit; right?

10 A I was responding to the embezzled vehicle.

11 Q Understood. But the meth tip is not in your  
12 affidavit; can we agree on that?

13 A Yes.

14 Q So going back now to the declaration you filed  
15 in this case -- this is paragraph 4(C), you say that  
16 after receiving this information about the truck and the  
17 possible meth lab from Deputy Haven, you determined that  
18 this was an appropriate matter for the special  
19 assignment team; right?

20 A It's -- it was a crime, yes.

21 Q I'm just reading your words. Your words were:  
22 "I believe this was an appropriate matter for the  
23 six-person special assignment team"; right?

24 A Yes.

25 Q Now, again, the special assignment team is a

1 six-man tactical unit; right?

2 A It's -- it's a patrol team. We just don't get  
3 calls for service, and we go investigate crimes that we  
4 have time to do. So we're not considered -- it's not a  
5 promotion or it's not considered anything advanced.

6 Q Okay. So can we agree that it's a six-man team  
7 at least?

8 A Yes.

9 Q And you refer to it as a crime prevention unit;  
10 right?

11 A Yes.

12 Q And the first time that this truck was called  
13 in where there was no tip about meth, as far as you  
14 know, nobody was dispatched at all; right?

15 A Yup, I don't know.

16 Q As far as you know?

17 A Correct.

18 Q On December 16th, it was called in, again, with  
19 this new information about a possible meth lab; right?

20 A Yes.

21 Q And on that date, you determined that this was  
22 an appropriate matter for the special assignment team;  
23 right?

24 A Based on the embezzled vehicle.

25 Q I want to talk to you now about paragraph 5 of

1 your declaration. In paragraph 5, you say that you ran  
2 a record's check before going to Mr. Grey's house;  
3 right?

4 A Yes.

5 Q And I actually want to read exactly what you  
6 wrote. You wrote: "Upon receiving the report from  
7 Deputy Haven, I ran a record check on Mr. Grey."

8 That's what you wrote; right?

9 A Yes.

10 Q You wrote that you ran a record's check on  
11 Mr. Grey, quote, "in the CHEER system" -- C-H-E-E-R-S --  
12 "CHEERS system for California criminal record history,  
13 RAPS system" -- R-A-P-S system -- "for L.A. County  
14 information, and the California Warrant System"; right?

15 A Yes.

16 Q And you say that during that check you  
17 determined that Mr. Grey had a warrant; right?

18 A Yes.

19 Q You say that you also accessed his criminal  
20 history; right?

21 A Yes.

22 Q And you say that you saw that he had a prior  
23 felony; right?

24 A Yes.

25 Q And you also say that you learned that he was

1 listed on the terrorist watchlist; right?

2 A Yes.

3 Q You said that you reviewed these three specific  
4 databases in order to learn this information, right,  
5 CHEERS, RAPS, and the California Warrant System?

6 A Yes.

7 Q And you say in your declaration that you ran  
8 both, local and statewide searches; right?

9 A Not statewide.

10 Q We talked earlier about how your declaration  
11 was prepared; right?

12 A Yes.

13 Q Okay. I'm going to read from paragraph 5 of  
14 your declaration, and then you tell me if I got it  
15 right. I'm now at -- there are no page numbers, but  
16 it's 3 of 7.

17 There you wrote: "Above record systems are  
18 limited to records generated within L.A. County and the  
19 State of California."

20 That's what you wrote; right?

21 A Correct. But you said "states." I didn't run  
22 the whole United States. I did do the check in  
23 California and local.

24 Q Oh, I apologize. Yeah, I said -- I meant state  
25 not "states," if that was not clear.

1               Okay. Not -- I'm not familiar with CHEERS and  
2 RAPS, but I think I know the California Warrant System.  
3 The California Warrant System is a system that allows  
4 you to run a statewide search for warrants; right?

5 A           Yes.

6 Q           That's also known as the Wanted Persons System;  
7 right?

8 A           Correct, yes.

9 Q           And that's one of the databases that's  
10 accessible through Flex; right?

11 A           Yes. And at that time, I didn't have access to  
12 that. A secretary ran it for me.

13 Q           We'll get to that.

14 A           Okay.

15 Q           Now, all the records systems mentioned in your  
16 declaration are electronic systems; right?

17 A           Yes.

18 Q           And these systems are kept on  
19 government-controlled databases; right?

20 A           Yes.

21 Q           And those databases are maintained for the  
22 purposes of law enforcement?

23 A           Yes.

24 Q           And when you run someone on one of these  
25 electronic government-controlled databases, you do it on

1 a government device; right?

2 A Of course, yes.

3 Q You do it on a computer at the station or  
4 department-issued mobile device or mobile data center in  
5 the car. But however you do it, it's done  
6 electronically on a government computer; right?

7 A Yes.

8 Q Now, earlier we were talking about the process  
9 for preparing your declaration; right? And how you had  
10 this back and forth with the prosecutors; right?

11 A Yes.

12 Q The fact that you knew your declaration would  
13 be submitted to a judge; right?

14 A Yes.

15 Q That it was important that it would be  
16 completely accurate and truthful; right?

17 A Yes.

18 Q And you had the opportunity to review your  
19 declaration before filing it; right?

20 A Yes.

21 Q Now -- one second. The only exhibit attached  
22 to your declaration related to these supposed searches  
23 that you say you ran is Exhibit C; right?

24 A And that's where at in here?

25 Q It's -- there are a number of tabs on your

1 declaration -- sorry. On the first exhibit, there's an  
2 Exhibit C -- just tell you, it's a warrant abstract.

3 A Yeah, just the warrant abstract.

4 Q Right. There are no other exhibits; right?

5 A No.

6 Q And you didn't bring any other exhibits to this  
7 hearing; right?

8 A Correct.

9 MR. SNYDER: Your Honor, I want to ask to turn  
10 now to an e-mail in a document that was produced to me  
11 for the first time yesterday afternoon, which is  
12 attached as exhibit -- or it's Exhibit 14 in your  
13 binder.

14 THE COURT: Okay.

15 BY MR. SNYDER:

16 Q Let me know when you get there.

17 A Okay.

18 Q All right. And if -- the first page is an  
19 e-mail from the prosecutor to me, if you go to the  
20 fourth page, which is a letter date the December 5th,  
21 2023 -- do you see that?

22 A Yes.

23 Q And I want to ask you to -- to read along with  
24 me for the first paragraph, and I'm going to read it  
25 aloud. It says: "On November 7th, 2023, during a

1 meeting to prepare for his testimony at the forthcoming  
2 hearing on defendant's motion to suppress that was  
3 attended by AUSA Thomas Magana and ATF Special Agent  
4 Brandice Olmos (phonetic). Los Angeles County Sheriff's  
5 Deputy Clint Francisco made statements consistent with  
6 his prior reports and declarations in this matter along  
7 with the following additional statements."

8                  Do you see that?

9       A            I do now, there was two different ones.

10     Q            Oh, I apologize.

11                  So that's the first paragraph. And you had  
12 this meeting over -- or approximately one month ago;  
13 right?

14     A            On November 7th?

15     Q            Yeah?

16     A            Yes.

17     Q            In the second paragraph -- and again, you read  
18 along while I read aloud -- it says: "Prior to  
19 responding to the call for service during which Mr. Grey  
20 was arrested, Deputy Francisco asked an L.A. County  
21 Sheriff's Department secretary to run a wants and  
22 warrants check on Mr. Grey and learned that Mr. Grey had  
23 a following felony conviction, an outstanding warrant,  
24 and was on the terrorist watchlist; right?

25     A            Yes.

1 Q Now, in your declaration -- this is paragraph  
2 5 -- you wrote: "Upon receiving this report from  
3 Deputy Haven, I ran a record check on Mr. Grey"; right?

4 A Yes.

5 Q There are no records to support you running a  
6 check on Mr. Grey; right?

7 A That was me running the records by asking the  
8 secretary to run it for me. That's how we do it all the  
9 time.

10 Q Sure. But if I pulled up your MDC records, for  
11 example, I wouldn't see that; right?

12 A No.

13 Q Okay. And there's nothing associated with you  
14 specifically running those searches; right?

15 A It was me because I had the information giving  
16 it to the secretary to -- and they put in my information  
17 in the -- the urn number to that report to access that  
18 data. The secretary doesn't know how to do that.

19 Q Okay. In your declaration, you didn't say  
20 anything about calling a sheriff's department secretary;  
21 right?

22 A We -- in all of our reports, we don't reference  
23 a secretary.

24 Q You didn't say anything in your declaration  
25 about calling a secretary; right?

1 A No.

2 Q Now, you didn't say that -- you didn't just say  
3 that you ran the record's search. You also say that you  
4 ran searches on three specific databases; right?

5 A The secretary did, yes.

6 Q Right. Is it your testimony that as the  
7 secretary is relaying this information to you, he or she  
8 is kind of calling out, "Now, I'm running CHEERS. Now,  
9 I'm running RAPS. Now, I'm running the California  
10 Warrants System."

11 Is that your testimony?

12 A She -- when I tell her to run a subject, that's  
13 what she does. And she runs all those systems because  
14 we don't have access to those databases. I don't even  
15 have a log-in for those databases.

16 Q You don't have a log-in to -- to check the  
17 California Warrant System?

18 A At that time, no.

19 Q Who is it that ran those searches?

20 A I don't know -- I don't remember the  
21 secretary's name.

22 Q All right. So in your declaration, you wrote  
23 that you recalled running these searches on three  
24 specific databases; right?

25 A Uh-huh.

1 Q And you -- and you wrote that you recalled  
2 receiving specific information about Mr. Grey; right?  
3 A Yes.

4 Q And now much later, you say you didn't actually  
5 run those searches yourself; right?

6 A I did, using the secretary's -- it's the same  
7 thing. We used the secretaries all the time in the  
8 course of our job, and we use databases and gain  
9 information. And that's how we compile the -- the  
10 information. I still did it on the investigating  
11 officer. And that's how it -- that's how it works.

12 You can check any of my reports in the past.  
13 And we've never referred to a secretary pulling a  
14 booking number for us or an urn number, but the urn  
15 number is still there.

16 Q So you -- your testimony now is that you didn't  
17 run the searches yourself; right?

18 A I did.

19 Q You didn't personally log onto a computer and  
20 run the searches yourself; fair?

21 A In that case, no. I didn't.

22 Q But you can't recall who it was that ran them?

23 A I'd have to look at the in-service that day and  
24 speak with that secretary personally.

25 Q And you didn't --

1                   THE COURT: Why would you say that you ran  
2 something, but someone else did it? You did it under  
3 penalty of perjury. Why wouldn't you say, "I had my  
4 secretary run the searches"?

5                   THE WITNESS: In the reference of that, sir,  
6 we --

7                   THE COURT: Look, I've had dozens of officers  
8 testify. And every officer I've ever seen here has  
9 always said they've ran it themselves, but why would you  
10 say that?

11                  THE WITNESS: Now -- now, thinking about it,  
12 it -- that's truthful, yeah. That's true. We -- we  
13 don't run it. It's just one of those things, when we do  
14 report-writing -- it -- it sounds --

15                  THE COURT: But that's not accurate. You're  
16 stating it under penalty of perjury. Did you tell the  
17 Government lawyers that? That you didn't run it? Did  
18 you tell them -- did you tell them you didn't actually  
19 run it, that you had a secretary run it?

20                  THE WITNESS: We ran him by going through the  
21 secretary and providing his information. The secretary  
22 doesn't have that information. So by me -- that  
23 secretary wouldn't know what to do, if it wasn't for us  
24 going to her and saying, "Can you run this person for  
25 me?"

1           And she goes, "Yep," because she has the  
2 log-ins, the LACOS (phonetic) and all that stuff and  
3 does the database checks, and then provides that  
4 information to us. So I, in turn, got the information.  
5 She doesn't know -- the secretary doesn't understand  
6 even the information that she's running. She just knows  
7 to check this database, this database with that  
8 information.

9           So I think that's why we use that terminology  
10 of "I ran that person" because the secretary couldn't  
11 even testify on what she pulled. She -- she gives that  
12 information to us.

13           THE COURT: Well, we -- we will continue this  
14 hearing after today. And I'm going to want you to track  
15 her name down, and I want the secretary here for the  
16 continuation of this evidentiary hearing.

17           MR. SNYDER: And -- and just going back to that  
18 first paragraph...

19           THE COURT: Sit down, Counsel.

20 BY MR. SNYDER:

21 Q           In that paragraph, it said that you made  
22 certain statements that were consistent with your prior  
23 reports "along with additional statements"; right?

24           That's what that paragraph says?

25 A           Yes.

1 Q And this is one of the additional statements;  
2 right?

3 A The one that we're talking about right now?

4 Q Yeah.

5 A Yes.

6 Q So in your declaration, you said that you ran  
7 them; right?

8 A Yes.

9 Q And then you made additional statements that  
10 were not in your declaration, which are memorialized in  
11 this letter, which now says that someone else ran them;  
12 right?

13 That's why -- that's why I have this letter;  
14 fair?

15 A Yes.

16 Q I want to just make clear, one of the things  
17 that you said was that you actually can't run these  
18 searches; right?

19 A Correct.

20 Q Correct. Okay. It's just -- one final thing  
21 on this topic before we go on, you say you made this  
22 call to dispatch; right?

23 A To?

24 Q The secretary?

25 A The secretaries --

1 Q Okay.

2 A -- at the station.

3 Q Oh, okay. So there's no recording of it at  
4 all; is that what you're saying?

5 A Correct.

6 Q So you just had a in-person conversation with  
7 the secretary at the station; that's your testimony?

8 A That's what we do, yes.

9 Q Now, I'm going to skip ahead to something --  
10 sorry. I'll -- I'll keep where I am. One of the other  
11 things you said in paragraph 5 of your declaration is  
12 that at the same time as you ran Mr. Grey for warrants,  
13 which you say that you did before arriving at his home,  
14 you also learned that he was on the terrorist watchlist;  
15 right?

16 A Yes.

17 Q You didn't call the FBI before going to  
18 Mr. Grey's property; right?

19 A Correct.

20 Q You didn't call Homeland Security; right?

21 A No.

22 Q You didn't call the Terrorist Screening Center  
23 or Threat Screening Center; right?

24 A No. Deputy Haven did.

25 Q How do you know that?

1 A It's one of the items that he told us when he  
2 gave us all that information.

3 Q Can you show me where in your declaration it  
4 says that?

5 A No.

6 Q Is it in your declaration?

7 A It's in course of getting that information from  
8 Deputy Haven and me getting that information is what I  
9 did at the station. It's one of the -- the items of  
10 just researching it. And that's why it's in the report  
11 that he's on the FBI terrorist watchlist.

12 Q So your testimony is that before going to  
13 Mr. Grey's house, you actually did have contact with  
14 federal law enforcement, including people on the  
15 terrorist -- at the Terrorist Screening Center?

16 A Me? No.

17 Q Someone in your department who passed you  
18 information?

19 A Yes.

20 Q So if the prosecutor said that you didn't know  
21 any of this stuff about his history or anything like  
22 that, that would be wrong; right?

23 A All I knew is he was on the FBI terrorist  
24 watchlist.

25 Q And you knew that from?

1 A Deputy Haven had contacted --

2 Q Who?

3 A -- the center.

4 Q And he told you he called the center?

5 A Yes.

6 Q And he didn't tell you what they said?

7 A He didn't -- they didn't tell him anything.

8 Q Okay. And you didn't personally call the  
9 Terrorist Screening Center; right?

10 A No, because Deputy Haven had already contacted  
11 them.

12 Q All right. I want to ask you to go now to  
13 Exhibit E of your declaration. So this is Exhibit 1 and  
14 then the tab E. And I'll ask you to go to the page that  
15 is Bates 735, which is internal, I think, 14.

16 A 7 --

17 Q Yeah.

18 A 735?

19 Q Yep. Yep. And that's your name at the top of  
20 that page; right? Francisco?

21 A Yes, it is.

22 Q Okay. And what we can see here is that at  
23 9:10 p.m., you ran some searches; right?

24 A Yes, using the CAD.

25 Q Using the -- the what?

1 A Our MDCs, the computers that are in our car.

2 Q Right. And you ran these searches, among other

3 things, against the Wanted Person System; right?

4 A It's attached to it, yes.

5 Q And just to be clear, your testimony a couple

6 minutes earlier was that you can't run searches; right?

7 A On the CAD, I can.

8 Q Okay. But you -- you have access to your car;

9 right?

10 A Yes, but only limited information comes up on

11 that versus what a secretary can pull up.

12 Q Okay. What information did the secretary give

13 you that is not part of the information you could get?

14 A She can print out like a -- like a -- she can

15 put a picture on it that shows like past convictions and

16 stuff like that. CAD doesn't show us any of that

17 information.

18 Q Okay. So you ran these searches at 9:10 p.m.;

19 right? You can see the -- the time there, 21:10.

20 Do you see that?

21 A Yes.

22 Q And you're running wants and warrants checks on

23 Mr. Grey; right?

24 A Yes.

25 Q 9:10 p.m. would have been after your arrest of

1 Mr. Grey; right?

2 A Correct.

3 Q And I guess your testimony is that here you are  
4 rerunning the searches that had already been run in the  
5 past, but for which we have no record to learn the same  
6 information; right?

7 A With -- when we get somebody in custody, we put  
8 them in the back. We run their information through the  
9 computer, through the CAD.

10 Q Now, if you look -- let's see, it is the second  
11 line, there's a reference to "MDC11105."

12 Do you see that?

13 It's associated with the 1653 entry, MDC11105.

14 Do you see that?

15 A Yes, I see that.

16 Q That's a computer in your car; right?

17 A Yes.

18 Q And 11105 is the specific mobile data center  
19 associated with your car; right?

20 A Yeah. I don't know that for sure, but that's  
21 what it says on that paper, yes.

22 Q Right. That's why your name's on the top of  
23 the sheet; right?

24 A That's correct.

25 Q So I want to ask you now to what's been marked

1 as Exhibit 7, and I'll represent that the certification  
2 here is Exhibit 9. This is a document that I obtained  
3 via subpoena from the sheriff's department.

4 Just let me know when you're there.

5 A It says like --

6 Q Yeah, at 4-20-2023, that's the one.

7 A Yes, I see that piece of paper.

8 Q Okay. So if we look at the top here, there's a  
9 beginning date and an ending date, which is  
10 December 16th, 2022, to December 17th, 2022; right?

11 A Yes.

12 Q And if we go down a little bit below that --  
13 skip one line -- we can see "MDC11105"; right?

14 A Yes.

15 Q And that's your car; right?

16 A I don't -- I don't know which computer I had in  
17 my car at that time, but if that's what the paper says,  
18 yes.

19 Q And if you go down, we can actually see the  
20 text of the responses that you got back when you ran  
21 those queries at 9:10 p.m., which may not -- can you see  
22 the text of the responses or is it not there?

23 A I see a bunch of texts. I don't understand it.  
24 It's a bunch of numbers and stuff like that. It's --  
25 you know, looks like computer code.

1                   MR. SNYDER: Unfortunately, Your Honor, the  
2 full exhibit is not here. So I'm going to take a second  
3 and think about how to do this, but I can follow up on  
4 it in a second.

5                   THE COURT: Okay.

6 BY MR. SNYDER:

7 Q                 So let me ask you, when you -- when you ran  
8 those searches at 9:10 p.m., you got information back;  
9 right?

10 A               Yes.

11 Q                 And that information included information about  
12 the terrorist watchlist; right?

13 A                 If it -- it popped up on that at that time, it  
14 could have. I don't remember seeing that at that time.

15 Q                 Okay. And there was actually a phone number  
16 associated with the Terrorist Screening Center; right?

17 A               Yes.

18 Q                 And again, you say that before going to the  
19 home, you learned that Mr. Grey was on the terrorist  
20 watchlist; right?

21 A               Yes.

22 Q                 And you didn't call the FBI; right?

23 A                 Because Deputy Haven already did.

24 Q                 Okay. But you didn't call the FBI; right?

25 A                 No. I did not, no.

1 Q And you didn't call the number that was listed  
2 there in the return; right?

3 A No.

4 Q Instead, even though in your telling you knew  
5 Mr. Grey was on the terrorist watchlist, you didn't  
6 contact anyone from federal law enforcement; right?

7 A No.

8 Q You pressed forward to Mr. Grey's house; right?

9 A Yes.

10 Q After dark; right?

11 A Yes.

12 Q In the mountains; right?

13 A Yes.

14 Q To, in your telling, investigative a missing  
15 boxed truck; right?

16 A Embezzled vehicle, yes.

17 Q Which had been initially reported 11 days  
18 earlier; right?

19 A That's that first call for service, yes.

20 Q At which time, nobody was dispatched at all;  
21 right?

22 A I don't know.

23 Q Now, again, your testimony -- this is paragraph  
24 4(C) -- is that when you went to Mr. Grey's property on  
25 the night of December 16th, it was only to investigate a

1 missing U-Haul; right?

2 You were not there to conduct a criminal meth  
3 investigation?

4 A There was that second call for service that  
5 had -- that I read the text of it that said that there's  
6 possible manufacturing of meth inside the truck. So  
7 that was one of the things to investigate on top of the  
8 embezzled vehicle, yes.

9 Q Is it your testimony today that you were  
10 conducting also a criminal meth investigation?

11 A It was in the --

12 MR. MAGANA: Objection, Your Honor. That  
13 misstates the testimony.

14 THE COURT: Overruled.

15 THE WITNESS: It was in the call for service  
16 about possible manufacturing, so we were going up there  
17 for the embezzled U-Haul.

18 BY MR. SNYDER:

19 Q Okay. So I guess I -- I'll go through a few  
20 different documents with you.

21 I'm going to ask you first to look at your  
22 declaration, which you signed under penalty of perjury,  
23 and go to paragraph 4(C). This is page 2. And I'll ask  
24 you to just follow along while I read it.

25 Lines 24 to 28, you said: "I believe this was

1       an appropriate matter for the six-person special  
2       assignment team to handle because we had sufficient  
3       personnel to investigate a stolen vehicle in a  
4       wilderness area safely and without the need to call for  
5       additional support over the radio."

6                  That's what you said in this case under oath;  
7       right?

8       A           Yes.

9       Q           You didn't say anything about investigating  
10      meth; right?

11     A           No.

12     Q           I want to ask you to turn to Exhibit 2, which  
13      is your warrant affidavit, which you also signed under  
14      penalty of perjury.

15     A           And this is exhibit what?

16     Q           Exhibit 2. Now, if you go to the last page  
17      there, that's -- that's your statement of probable  
18      cause. And you drafted this on the night of these  
19      events; right?

20     A           Yes.

21     Q           And you knew it was going to a warrant judge;  
22      right?

23     A           Yes.

24     Q           And what you wrote in Exhibit 2 was that the  
25      purpose of going to Mr. Grey's property was to

1 investigate a missing U-Haul; right?

2 That was what you wrote in that document?

3 A Yes.

4 Q You didn't say anything about going to  
5 investigate a meth lab; right?

6 A Correct.

7 Q And when explaining the arrest, this is now the  
8 second paragraph -- I apologize -- the third paragraph,  
9 you wrote that you detained and arrested suspect, Grey,  
10 for being in possession of an embezzled vehicle; right?

11 That's what you wrote?

12 A Yes.

13 Q I want to ask you to turn to Exhibit 3, which  
14 is your police report in this case. And earlier,  
15 remember we talked about the process for preparing  
16 police reports and the importance of including pertinent  
17 information; right?

18 A Yes.

19 Q And in Exhibit 3, I'm now in the second  
20 paragraph, you wrote: "Sergeant Rios, Deputy Tirado,  
21 Deputy Mendez, Deputy Tabanez, and Deputy Marin and I  
22 went to the indicated area for the embezzled U-Haul";  
23 right?

24 A Yes.

25 Q And nowhere in your report do you mention going

1 there to investigate a meth lab; right?

2 A No.

3 Q But your testimony today is that that was  
4 actually the secondary purpose of going?

5 A No. It was just in the call for service. So  
6 if it was there, then we would investigate it.

7 Q So you were also investigating a potential meth  
8 lab?

9 A If it's in the call for service stating that  
10 there's possibly a manufacturing of meth in the back of  
11 the U-Haul and we arrive and it's there, yes. We would  
12 investigate it.

13 Q Okay. But you knew before you went; right?

14 You had this call before you went?

15 A Yes.

16 Q So it's not like something you learn for the  
17 first time when you got there; right?

18 A Correct.

19 Q I'm going to read from you page 4, lines 3  
20 through 8 of the Government's opposition. The  
21 Government wrote: "The special assignment team is a  
22 six-man group in the Santa Clarita area, which Deputy  
23 Francisco believed had sufficient personnel to  
24 investigate a stolen vehicle in a wilderness area safely  
25 and without the need to call for additional support over

1       the radio. They were near the beginning of their  
2       ordinary shift from 4:00 p.m. to 2:00 a.m. and were,  
3       therefore, well positioned to further investigate."

4                  Are saying that that's not accurate?

5       A           That's accurate.

6       Q           Well, you're telling me now that your only  
7       purpose was not simply to investigate a missing U-Haul.  
8       It was also to -- a secondary purpose of investigating  
9       this meth lab; right?

10                MR. MAGANA: Objection, Your Honor. This,  
11               again, misstates the testimony. What the deputy said  
12               was that if they found a meth lab there, they would have  
13               investigated it, not that it was their purpose in going  
14               up there.

15                THE COURT: Sustained.

16               BY MR. SNYDER:

17       Q           So just to be clear, you knew about this  
18               secondhand anonymous tip before arriving to the  
19               property; right?

20       A           As you said, it was "secondhand" info of that.  
21       Yes, I did know that. Right.

22       Q           Okay. And when you went to the property, you  
23               didn't, like, immediately see a meth lab; right?

24       A           No.

25       Q           Okay. Let's actually talk about what happened

1       when you got there. So shortly after arriving at the  
2       property, you located Mr. Grey by the U-Haul; right?

3       A           Yes.

4       Q           And when you got there, you and Sergeant Rios,  
5       you pointed your guns at him; right?

6       A           Yes.

7       Q           You put him in handcuffs; right?

8       A           Yes.

9       Q           You placed him under arrest?

10      A           Yes.

11      Q           And you took him over to your patrol car and  
12       put him inside; right?

13      A           Yes.

14      Q           And after putting Mr. Grey in your patrol car,  
15       you went back to the U-Haul; right?

16      A           Yes.

17      Q           And you met up again with Sergeant Rios and one  
18       or two other officers; right?

19      A           Yes.

20      Q           And you confirm the license plate on the  
21       U-Haul. That this was the U-Haul you were looking for;  
22       right?

23      A           Yeah.

24      Q           And you looked in the back of the U-Haul;  
25       right?

1 A Yes.

2 Q Which is where the anonymous secondhand tipster  
3 said that a meth lab would be; right?

4 A Yes.

5 Q And there was no meth in there; right?

6 A No.

7 Q If we just freeze things right there in that  
8 moment, you say that you were on property for  
9 embezzlement investigation. That was your primary  
10 purpose; right?

11 A Yes.

12 Q You arrested Mr. Grey; right?

13 A Yes.

14 Q You had him detained in the back of your car;  
15 right?

16 A Yes.

17 Q You confirmed that the U-Haul was the one that  
18 you were looking for; right?

19 A Yes.

20 Q But you did not turn around and leave; right?

21 A No.

22 Q In your declaration -- I'm now at paragraph  
23 8 -- you say that what happened next was, and I'm  
24 quoting you: "The special assignment team conducted a  
25 sweep of the exterior of the property for officer

1 safety."

2 Is that your testimony?

3 A Yes.

4 Q Okay. Were you doing a meth investigation or  
5 doing a sweep for officer safety?

6 A Doing a protective sweep for officer safety.

7 Q Okay. And so for the period of time between  
8 Mr. Grey's arrest and -- and -- and when you asked for  
9 his permission to go in the home, that was a sweep for  
10 officer safety; right?

11 A We did the protective sweep around the  
12 property, yes. Continue the investigation of the  
13 embezzled vehicle.

14 Q Okay. And when did that end?

15 A Not until I was done talking with Mr. Grey.

16 Q And he gave you permission to go inside; right?

17 A Yes.

18 Q Okay. So that 35-minute period between when  
19 you arrive and when you ultimately get his permission to  
20 go inside the home, that's a sweep of the exterior of  
21 the property for officer safety; right?

22 A No, the sweep was only probably three --  
23 four minutes, if that.

24 Q What was going on after that?

25 A I had to talk with Mr. Grey.

1 Q Okay. Well, the videos are what they are. You  
2 know, the time was what it was. And -- and I guess  
3 my -- my more pointed question is: During that period  
4 of time, were you conducting a criminal meth  
5 investigation around and, kind of, inside Mr. Grey's  
6 home?

7 A No.

8 Q No. Okay. Now, if you had him arrested for  
9 the U-Haul at that point, my first question is:  
10 Wouldn't it have been more conducive for officer safety  
11 to just leave?

12 A No. I can't leave the 30-foot U-Haul behind.  
13 We have to do our CHP 180. We have to do paperwork on  
14 that.

15 Q Okay.

16 A And I also have to inventory the vehicle to  
17 make sure there's nothing illegal in that, as well. All  
18 that stuff takes time. A tow truck to get that removed  
19 takes some time. So we had to make sure that the area  
20 was secure for us to do all that.

21 Q Okay. When'd you do the inventory?

22 A The vehicle inventory was done -- we did a  
23 preliminary check of the vehicle. And the -- the  
24 vehicle's actually towed earlier that morning.

25 Q Yeah. When did -- you said that you needed to

1 clear the area for safety so you could do the inventory.

2 When did you do the inventory?

3 A We had to call the tow truck.

4 Q Right?

5 A And the tow truck said they couldn't respond  
6 until earlier that morning. And that's when that -- the  
7 tow truck came out and that's when that CHP 180 was  
8 completed.

9 Q Okay. So you didn't do one?

10 A We were back at the station already. And  
11 another deputy was out there and he completed a report  
12 for that recovery, as well.

13 Q Okay. But your testimony was that you needed  
14 to do the sweep for officer safety so that you could do  
15 the CHP 180 report and get it towed, but you didn't do a  
16 CHP 180 report; right?

17 A Because we were doing the protective sweep.

18 Q Understood. After -- after the protective  
19 sweep was over, did you do the CHP 180 that night?

20 A No, because Mr. Grey gave us permission to go  
21 get his cell phone and keys.

22 Q Okay. And is it your testimony that a tow  
23 truck was going to come after dark to that property that  
24 night?

25 A We hadn't requested anything yet because we

1 haven't gotten to that point yet. We're still making  
2 the -- the area secure.

3 Q Okay. And so it's -- again, it's your  
4 testimony that the safest thing to do was not to take  
5 Mr. Grey back to the station. It was to kind of go  
6 around the property during this period of time for  
7 however long that took; right?

8 A Yes, it's just very large property.

9 Q Okay. So I want to ask you about some of the  
10 things that happened during this period. After  
11 arresting Mr. Grey, as I said, the first thing you did  
12 was you went to check the U-Haul; right?

13 A Yes.

14 Q After doing that, you had officers set up a  
15 parameter around the home; right?

16 A Yes.

17 Q You instructed officers to check and see if  
18 there was any movement in the RV; right?

19 A Yes.

20 Q At some point, you and the other officers went  
21 around to the back of Mr. Grey's home; right?

22 A Yes.

23 Q You looked in the yard; right?

24 A Yes.

25 Q You inspected a -- a house on an adjacent lot;

1 right?

2 A Right behind his house, yes.

3 Q Several other officers tried to, kind of, look  
4 in the home, see if they could see what was going on  
5 inside the home; right?

6 A Yeah.

7 Q At some point, Seargant Rios and another  
8 officer went to the front door; right?

9 A Yes.

10 Q They knock on the front door and didn't get an  
11 answer; right?

12 A Yes.

13 Q They opened the door, and they looked inside;  
14 right?

15 A Yes.

16 Q And your testimony is that all of that was for  
17 officer safety; right?

18 A Correct.

19 Q It's your testimony that that was not part of a  
20 criminal meth investigation; right?

21 A Correct.

22 Q All right. So I want to talk about some other  
23 things.

24 MR. SNYDER: And with the court's permission,  
25 I'm going to play a few short video clips, which are

1        excerpted from exhibits that had been filed; is that  
2        okay?

3                    THE COURT: That's fine.

4                    MR. SNYDER: So the first clip that we have is  
5        Exhibit 5 to the motion. The time stamp is 12:25  
6        through 12:33. I've marked it as Exhibit 12 to this  
7        hearing. And I'll ask Mr. Grey to please play  
8        Exhibit 12.

9                    (Whereupon, Defense's Exhibit 12 is marked hereto.)

10                  (Whereupon, video is played in open court.)

11                  BY MR. SNYDER:

12                  Q            So what we saw on that video is Sergeant Rios;  
13        right? He's the -- he's the speaker?

14                  A            Right.

15                  Q            And at that point, he had opened the front door  
16        to Mr. Grey's home without a warrant; right?

17                  A            Yes.

18                  Q            And he had spent some time looking inside the  
19        home with another deputy; right?

20                  A            Yes.

21                  Q            And then he said: "Do you see anything related  
22        to meth or anything like that"; right?

23                  A            That's what he said.

24                  Q            Is it your testimony that opening Mr. Grey's  
25        front door without a warrant and looking for meth or

1 anything like that inside his home was something done  
2 for officer safety?

3 A I can't speak on the behalf of another deputy.  
4 He would have to testify to that as to his reasoning for  
5 doing so.

6 Q Okay. And it's your -- your testimony is that  
7 this was not part of a criminal meth investigation;  
8 right?

9 A Correct.

10 Q Okay. In addition to asking anything relating  
11 to meth, Sergeant Rios also asked whether there was  
12 anything to stay away from inside the home; right?

13 A Yes.

14 Q This is ten minutes after you arrived at the  
15 property; right?

16 A Yes.

17 Q And he's already asking if there are things to  
18 avoid inside Mr. Grey's home; right?

19 A Yes.

20 Q At some point after this, two of the deputies  
21 went around to the back of Mr. Grey's house, and they  
22 started inspecting items in his laundry area; right?

23 A Yes.

24 Q And after looking at them, they came back to  
25 you and said they had found meth precursors; right?

1 A Yes.

2 MR. SNYDER: Again, with the Court's  
3 permission, I would like to play -- what I've -- what  
4 I've marked for this hearing as Exhibit 10, but it's  
5 Exhibit 4, time stamped 16:55 to 17:07; is that all  
6 right?

7 THE WITNESS: Go ahead.

8 MR. SNYDER: Thank you.

9 (Whereupon, Defense's Exhibit 10 is marked hereto.)

10 (Whereupon, Defense's Exhibit 4 is marked hereto.)

11 (Whereupon, video is played in open court.)

12 BY MR. SNYDER:

13 Q So in this clip, the deputies had just finished  
14 telling you about the supposed meth precursors. And  
15 your response was: "I'm going to question him some more  
16 on that and see if he'll come clean. And if he doesn't,  
17 we're going to investigate that some more. And then  
18 we'll get a warrant for the house"; right?

19 A That's what I said.

20 Q Is it your testimony that inspecting the  
21 cleaning supplies in Mr. Grey's laundry area was done  
22 for officer safety?

23 A No. That was to investigate what my partner,  
24 which has a -- he just went to a class for meth -- for  
25 manufacturing narcotics, that he told me, "I want to

1 verify if it looked like any type of meth or meth lab  
2 stuff."

3 Q Okay. So when they were around the back of the  
4 house, that was not for officer safety. That was a meth  
5 investigation?

6 A They went to the back to do a protective sweep.  
7 And when they saw the chemicals, which he recognized to  
8 be consistent with chemicals used to construct  
9 methamphetamine, that's why he came back and reported  
10 that to me.

11 Q Okay. And -- and you eventually did go and  
12 inspect those; right?

13 A Yes.

14 Q And you found that it was apple cider vinegar  
15 and bleach; right?

16 A Yeah. It didn't look consistent to me at all.

17 Q Now, is it your testimony that questioning  
18 Mr. Grey further about the cleaning supplies would have  
19 been something that would have -- was done for officer  
20 safety?

21 A If I'm presented with something, I'm still  
22 going to ask him to -- what the chemicals are to see  
23 what they are. And I just asked him a general question.

24 Q And when you said that if Mr. Grey didn't come  
25 clean, you were going to investigate some more, is it

1 your testimony that investigating the chemicals some  
2 more was not referring to a criminal investigation?

3 A If it was in fact what he said it was -- if it  
4 was a meth lab, then we would investigate it further.  
5 And then that's why I said we would get a warrant if it  
6 was a meth lab.

7 Q Okay. And when you said that you would get a  
8 warrant for the house -- in your testimony, that getting  
9 a warrant for the house would have been for officer  
10 safety or what would that have been for?

11 A Well, we're going off -- we're speculating that  
12 there was some type of meth lab. There was no meth lab.  
13 So there was nothing to investigate any further on that  
14 because I've already looked at the chemicals and deemed  
15 that there -- there was not a meth lab.

16 MR. SNYDER: With the court's permission, I  
17 want to play another portion of the video. This is  
18 Exhibit 4 to the motion, time stamped 18:50 to 19:40.  
19 And I've marked it as Exhibit 11, is that all right?

20 THE COURT: Go ahead.

21 (Whereupon, video is played in open court.)

22 BY MR. SNYDER:

23 Q When you went to question Mr. Grey about the  
24 chemicals, one of the things you said was, quote:  
25 "You're not doing anything illegal here inside the house

1 or anything like that that I need to know about"; right?

2 A Yes.

3 Q You said, "if we go through your house, we're  
4 not going to find anything"; right?

5 A Yes.

6 Q Is it your testimony that that questioning was  
7 also for officer safety?

8 A That was in regards to the possible meth lab  
9 that my partner just told me about, which I haven't  
10 confirmed yet.

11 Q Is it your testimony that going through his  
12 house and looking for anything illegal would have been  
13 for officer safety?

14 A That would not be for officer safety, no.

15 Q When you said that you were going to come back  
16 and that you wanted an answer from him about the  
17 chemicals, is it your testimony that that was for  
18 officer safety?

19 A That was in regards to my partner telling me  
20 there's a -- chemicals that were used for a meth lab in  
21 the back, and that's why I asked him about that.

22 Q Let me ask you this: If Mr. Grey had responded  
23 to those questions by saying, "Go ahead and check. Go  
24 in my house. I have nothing to hide," what would have  
25 you done?

1                   MR. MAGANA: Objection, Your Honor. It's a  
2 hypothetical. Calls for speculation.

3                   THE COURT: Sustained.

4 BY MR. SNYDER:

5 Q                 Would you have gone in Mr. Grey's house if he  
6 had said, "Go ahead. Go inside"?

7                   MR. MAGANA: Same objection, Your Honor.

8                   THE COURT: Sustained.

9 BY MR. SNYDER:

10 Q                At some point after this, one of the deputies  
11 started running VIN numbers for the cars on Mr. Grey's  
12 property to see if they were stolen; right?

13 A               Yes.

14 Q                Is it your testimony that running the VIN  
15 numbers was for officer safety?

16 A               No.

17 Q                So just to be clear, you said in your  
18 declaration under oath that the activity performed  
19 during this time period, which you described as a sweep  
20 of the exterior of the property, was for officer safety;  
21 right?

22 A               Yes.

23 Q                And this was not a criminal meth investigation  
24 that you were conducting during this time; right?

25                   MR. MAGANA: Objection, Your Honor. Misstates

1 the testimony in the declaration.

2 THE COURT: Overruled.

3 THE WITNESS: The protective sweep was not for  
4 the investigation.

5 MR. SNYDER: Okay.

6 THE COURT: For what investigation? The meth?

7 THE WITNESS: For the meth.

8 BY MR. SNYDER:

9 Q And again, the meth investigation is not  
10 something you mentioned in your declaration that you  
11 filed in this case; right?

12 A Because he wasn't arrested for meth.

13 Q And you didn't mention it in your warrant  
14 affidavit; right?

15 A Correct.

16 Q And you didn't mention it in your  
17 contemporaneous police report; right?

18 A Yes.

19 Q Now, at some point after this 35-minutes of  
20 activity you turned off your camera to debrief with  
21 Sergeant Rios; right?

22 A Yes.

23 Q You and he debriefed for three minutes; right?

24 A I don't remember the exact amount of time, but  
25 we did do a debrief.

1 Q Yeah. That makes sense. When you turned your  
2 camera back on, you then went over to talk to Mr. Grey,  
3 again; right?

4 A Yes.

5 Q And it was at that point after -- I'll tell  
6 you, it was 35 minutes -- that you told Mr. Grey that  
7 you had to take him to the station; right?

8 A Yes.

9 Q And you told him that his house would be  
10 unsecured when you took him to the station; right?

11 A Yes.

12 Q And then you said that you could go inside and  
13 get his phone and keys and lock the door; right?

14 A Yes, I asked him if I could.

15 Q I want to look quickly at what you wrote in  
16 your arrest report about this period of time. So if you  
17 can turn please to Exhibit 3...

18 Now, in your arrest report, you don't say  
19 anything about all the things that we just discussed;  
20 right?

21 A Yes, I did.

22 Q You don't say anything about, let's say,  
23 opening the front door to Mr. Grey's home and looking to  
24 see if there's meth inside; right?

25 You don't say that?

1 A No.

2 Q You don't say -- say anything about inspecting  
3 the laundry area; right?

4 You don't say that?

5 A No.

6 Q No. You don't say anything about questioning  
7 Mr. Grey related to meth or anything like that; right?

8 A Correct.

9 Q You don't say that you had contemplated  
10 investigating further and getting a warrant; right?

11 A Correct.

12 Q If I were just reading your report, what it  
13 would look like to me would be that you detained  
14 Mr. Grey, you confirmed the U-Haul, and then he gave you  
15 consent to enter his home; right?

16 Those are the only facts that you listed;  
17 right?

18 A There was more.

19 Q Tell me -- tell me for this period of time  
20 we're talking about -- after Mr. Grey's arrest, before  
21 you go in the home -- what more is there?

22 A In the report, he -- it said he told me that he  
23 actually had an incident. And I was investigating that,  
24 as well, about the two people that came to his house and  
25 shot his house up.

1 Q That's true. You do mention that, too. That's  
2 the only thing you mention; right?

3 A Yes.

4 Q You don't mention any of the activity that you  
5 and your fellow officers engaged in; right?

6 A Correct.

7 Q And if I were just reading this report, I  
8 wouldn't know that you had done any of that; right?

9 A Yes.

10 Q What it would look like is that you showed up  
11 to the property; right?

12 That would be one thing I could learn; correct?

13 A Yes.

14 Q And then you arrested Mr. Grey; right?

15 A Yes.

16 Q You Mirandized Mr. Grey; right?

17 A Yes.

18 Q He gave you a little bit of information about  
19 this prior incident; right?

20 A A lot of information, yes. And then he --

21 (Cross-talk.)

22 THE WITNESS: -- look at his cell phone.

23 BY MR. SNYDER:

24 Q Sorry. Go ahead.

25 A That he wanted me to look at his cellphone to

1 prove this case because I have to investigate that, as  
2 well as him being a victim of that.

3 Q And then, the other fact that I would learn is  
4 that you said that, you know, he asked you to get his  
5 stuff from inside the home; right?

6 Those are the facts in your -- in your report?

7 A Yes.

8 Q And you don't mention any of this activity in  
9 your warrant affidavit either; right?

10 All the activity that the officers did; right?

11 A Correct.

12 Q Let's go now to paragraph 10 of your  
13 declaration. In paragraph 10, you say that following  
14 his arrest, Mr. Grey asked you to retrieve property from  
15 inside his home, generally; right?

16 A Yes, generally.

17 Q You then say -- and I'm quoting: "I believe  
18 that a protective sweep of the interior of the residence  
19 was necessary"; right?

20 A Yes.

21 Q You then set out a bunch of reasons  
22 supposedly -- supposedly supporting that belief; right?

23 A Yes.

24 Q Every single one of the things that is  
25 mentioned in that paragraph, you were aware of before

1       entering the home; right?

2       A           Yes.

3       Q           In fact, in your declaration, you say that you  
4       made the decision to sweep the home before you even  
5       entered; right?

6       A           Yes.

7       Q           Now, that's not what you said on the night of  
8       Mr. Grey's arrest; right?

9       A           No. We did a protective sweep of the house the  
10      night of his arrest.

11      Q           Right. But you didn't say on the night of his  
12      arrest that you made the decision to sweep before  
13      entering based on a bunch of factors; right?

14      A           No. I said -- I said we were going to do a  
15      protective sweep to my partners.

16      Q           After arresting Mr. Grey, you took him to be  
17      booked at the police station; right?

18      A           Yes.

19                  MR. SNYDER: With the court's permission, I  
20      want to play -- this is the last clip that I have.

21                  THE COURT: Okay.

22                  MR. SNYDER: This is from Exhibit 14, which is  
23      time stamped 1:04 to 2:01. I've marked it as  
24      Exhibit 14; if Mr. Grey can play it...

25                  (Whereupon, video is played in open court.)

1 BY MR. SNYDER:

2 Q All right. So that is what you said on the  
3 night of the arrest and search; right?

4 A Yes.

5 Q And that was immediately right after that  
6 activity; right?

7 A I don't know about immediately because we still  
8 had to drive all the way back. And it's -- it's -- it's  
9 not immediately.

10 Q I apologize. That was the same night that  
11 those events happened; right?

12 A Yes.

13 Q That was before you met with the prosecutors in  
14 this case; right?

15 A Yes.

16 Q That was before we filed our suppression  
17 motion; right?

18 A Yes.

19 Q Before they drafted your declaration in  
20 response to this motion; right?

21 A Yes.

22 Q And you said something similar to what you said  
23 on that video in your warrant affidavit, too; right?

24 A Yes.

25 Q You said something similar to what you said on

1 that video in your report, also; right?

2 MR. MAGANA: Objection, Your Honor. This is  
3 vague.

4 THE COURT: Overruled.

5 THE WITNESS: Yeah, I -- I don't understand  
6 that question. Are you saying that I wrote that in my  
7 report or...

8 BY MR. SNYDER:

9 Q Sure. If you go to Exhibit 3, go to page Bates  
10 540.

11 A Exhibit A?

12 THE COURTROOM DEPUTY: 3.

13 BY MR. SNYDER:

14 Q Exhibit 3, yeah.

15 A Page 540?

16 Q Yeah. So if you look at the second paragraph  
17 to the end. Starts with: "Deputy Marin"; right?

18 A Yes.

19 Q It says: "Deputy Marin stayed with the suspect  
20 at the patrol vehicle while we entered the house to  
21 retrieve the above items only."

22 Referring to the phone and keys; right?

23 A Yes.

24 Q And then you continue on to the next page and  
25 you describe going into the home and finding drug

1       paraphernalia; right?

2       A           Yes.

3       Q           And then in the second full paragraph, you say  
4       there -- kind of similar to what you said on the video:  
5       "At that point, prior to continuing to locate his phone  
6       and keys or conducting narcotics investigation, we  
7       conducted a sweep for officer safety"; right?

8       A           Yes.

9       Q           In your conversation with Mr. Grey, in your  
10      warrant affidavit and in your report, you didn't mention  
11      any of the factors that are listed in paragraph 10 of  
12      your declaration; right?

13      A           I'd have to look at that report to refresh my  
14      memory on that one. I don't remember that.

15      Q           Can you -- can you think of anything -- does  
16      anything jump to your mind?

17      A           Can I look at the declaration?

18      Q           Sure. And that's --

19      A           What page is that?

20      Q           -- paragraph 10. And then there are a bunch of  
21      subparagraphs.

22      A           On which page?

23      Q           The internal -- the number at the top is 5 of  
24      7.

25      A           Okay. In which paragraph?

1 Q Paragraph 10.

2 And my question, again, is: In your report and  
3 what you said to Mr. Grey, your statements on the night  
4 of, you didn't mention any of these factors that are now  
5 listed in paragraph 10; right?

6 A Yes.

7 Q And in paragraph 10, you didn't say anything  
8 about making a decision to do the sweep based on  
9 something you said inside the home; right?

10 A Correct.

11 Q The first time that you made the statements in  
12 paragraph 10 was after we filed the suppression motion  
13 in this case; right?

14 A It was -- I don't -- I don't know when that  
15 was.

16 Q Well, the first -- the first time you made the  
17 statements listed in paragraph 10, I guess is in  
18 paragraph 10 of your declaration. It's not something  
19 you said on the night of. It's not in your report.  
20 It's not in your warrant affidavit; right?

21 A No. It's something that I talked about with  
22 the -- with the agent there -- when we drafted the --  
23 the declaration.

24 Q Okay. I want to talk about something else in  
25 your warrant affidavit. This is Exhibit 2. And if you

1 can go to the fourth paragraph of -- this is the last  
2 page. The first line -- sorry. The second line. I can  
3 read it for you.

4 It says: "While inside the residence, in plain  
5 view, we saw drug paraphernalia and a bag containing  
6 methamphetamine"; right? That's what you wrote?

7 A Yes.

8 Q You said something a little bit different in  
9 paragraph 11 of your declaration in this case; right?

10 A Yes.

11 Q In this case, you say that after entering the  
12 cabin, Tirado moved to turn off the music and flagged  
13 that there was a pipe next to the phone; right?

14 A Yes.

15 Q But you don't say anything about there being a  
16 bag of meth; right?

17 A Correct.

18 Q That's because there was no bag of meth on that  
19 table; right?

20 A There was.

21 Q Why don't you say it in your declaration?

22 A It's in -- it was in general -- I didn't  
23 describe everything else that's on the table either.  
24 Just the fact that we went in and saw on that table is  
25 what we listed. There's multiple paraphernalia items

1 and everything like that. I didn't list those either.

2 Q The bag of meth was actually found in another  
3 part of the living room; right?

4 A There was multiple bags inside the living room.

5 Q Well, at the time that you guys entered the  
6 home, nobody called out, "I got a pipe and a bag of  
7 meth"; right?

8 A Not that I heard.

9 Q He said, "I have a pipe"; right?

10 A Correct.

11 Q And now, your declaration, paragraph 11, only  
12 mentions the pipe; right?

13 A Yes.

14 Q All right. Sticking briefly with this moment  
15 in time, when you entered the home and Deputy Tirado  
16 said that he saw that pipe, you didn't stop at that  
17 point and seek a warrant; right?

18 A No.

19 Q It was only after entering the bedroom that you  
20 said, and I'll quote you: "We got a Barrett 50. He's a  
21 convicted felon. Yeah, this whole house is ours now.  
22 There's ammo on the bed. He can't have all that. I'm  
23 going to call and get a warrant to get all this"; right?

24 A Yes.

25 Q Last, kind of, topic here: Based on the

1 documents that I received yesterday, it sounds like you  
2 met with the prosecutors in advance of this hearing;  
3 right?

4 A Yes.

5 Q Describe briefly what -- what you guys did to  
6 prepare?

7 A We went over the body cam videos. And then we  
8 also went over the -- the -- the -- the last  
9 statement that we have. We -- we talked about that.  
10 And then we just talked about the incident.

11 Q And did they do like a mock cross-examination  
12 or anything like that?

13 A They asked me very few questions, just general  
14 basis stuff.

15 Q Was there an agent in the room?

16 A Yes.

17 Q Was she taking notes?

18 A Yes, she was.

19 Q And were there parts of your testimony that  
20 they had identified as problem areas or things that you  
21 needed to correct?

22 A No.

23 Q Were there answers during that preparation  
24 where they suggested you say one thing as opposed to  
25 your initial answer?

1 A No.

2 Q And again, I may have asked this before but  
3 just to be clear: You've been communicating during this  
4 case with prosecutors and case agent, you say, only by  
5 calls. No texts or e-mails; right?

6 A Correct.

7 Q Did you or any other deputy disconnect the  
8 surveillance cameras at Mr. Grey's home?

9 A We went inside the room, but they might have  
10 been disconnected. But I wasn't sure who did -- who did  
11 that.

12 Q What happened to the surveillance videos?

13 A I don't know.

14 Q How much cash was taken from Mr. Grey's home?

15 A We don't count his money.

16 Q You didn't -- you don't know how much money was  
17 there?

18 A We -- one of our policies is we don't count  
19 large sums of cash, we just bag it up and have a watch  
20 commander video it.

21 Q Do you have a tattoo of a skull, a snake, or a  
22 cowboy?

23 A No.

24 Q I want to turn now to Exhibit 14, which is  
25 something that we looked at earlier. It contains

1 materials that were produced to me for the first time  
2 yesterday afternoon. And I'll ask you to turn to now  
3 the first letter in there, which is stamped "protective  
4 order." Do you see that?

5 A Which exhibit's that?

6 Q This is Exhibit 14.

7 The first page behind the e-mail?

8 A You've got them labeled in letters. So exhibit  
9 or number?

10 Q Number 14. Sorry. It's at the back. It  
11 should be at the back.

12 A An e-mail?

13 Q Yeah. The first page is an e-mail. Do you see  
14 that?

15 A Yes.

16 Q And then if you go to the next page...

17 THE COURT: There is no next page.

18 THE COURTROOM DEPUTY: There's an A and a B.

19 MR. SNYDER: Sorry. Tab A. I apologize.

20 THE COURT: Tab A? Okay.

21 MR. SNYDER: These are all coming together at  
22 the last minute.

23 BY MR. SNYDER:

24 Q So Exhibit 14 is, I'll represent to you, a  
25 letter that I received from the prosecutors yesterday;

1 right?

2 You can see that the -- the letter is dated  
3 December 5th?

4 A Yes.

5 Q And it refers to a citizen complaint that was  
6 filed against you in October of 2019; right?

7 A Yes.

8 Q And you've talked about that complaint even  
9 today with the prosecutor; right?

10 A I did.

11 Q And the basic description of that complaint is  
12 that you and a trainee officer saw a camper on a public  
13 street; right?

14 A I was the training officer and a trainee.

15 Q I'm -- I'm not enunciating very well. I --  
16 I -- what I intend to say was that you and a trainee --  
17 so EE officer -- saw a camper on a public street; right?

18 A According to the paper, yes.

19 Q And -- and you ran the information related to  
20 the camper for warrants; right?

21 A I don't remember that incident at all. It was  
22 2019, and I've contacted thousands of people. I don't  
23 remember it all. It was never even brought up to my  
24 attention, really.

25 Q It was never brought to your attention?

1 A Back in 2019, when it's -- it was unfounded  
2 with anything.

3 Q It -- there was a reprimand; right?

4 A In this, no.

5 Q It's your -- how many times have you been, kind  
6 of, reported in this way and had an investigation  
7 conducted?

8 A I've never had an investigation.

9 Q So is this the only time where you've had a  
10 citizen complaint that resulted in an investigation or  
11 reprimand? Is that -- I mean, I'm trying to understand  
12 how you don't remember this?

13 A I've only had five complaints.

14 MR. MAGANA: Objection. This questioning calls  
15 for speculation because he does not receive citizen  
16 complaints.

17 THE COURT: Overruled.

18 THE WITNESS: Yes -- I've only -- in my  
19 11 years, I've only had five complaints from citizens.

20 BY MR. SNYDER:

21 Q So I'm reading here from the letter and it says  
22 that it -- and this is the second paragraph below where  
23 it says your name, it says: "An internal review found  
24 that your conduct was reasonable."

25 Do you see that?

1 A Yes.

2 Q So you'd agree that there was an internal  
3 review; right?

4 A Station level, yes.

5 Q And during that process, they interviewed you;  
6 right?

7 A They would have, yes.

8 Q Okay.

9 A I don't remember it though is what I'm saying.

10 Q Right. But this is -- this is a citizen  
11 complaint from 2019. There's an internal review. You  
12 were interviewed. And I'll represent to you that there  
13 was a finding that you guys didn't document things  
14 correctly. You don't remember any of that?

15 A No, I don't.

16 Q Okay. Well -- well, we can both remember  
17 together, I -- I guess, with the letter because the  
18 letter is there. And you tell me whether or not you can  
19 recall this: So what the citizen said was that you went  
20 to a -- a camper. And you showed up at the front door,  
21 and you said, "Hey, someone in here has a warrant."

22 You're saying you don't remember that; right?

23 A I don't.

24 Q Okay. And then what happened was you and the  
25 trainee officer took the citizens out of their car and

1 put them in a patrol car.

2 You're saying you don't remember that; right?

3 A No, I don't.

4 Q And then --

5 MR. MAGANA: Your Honor, this is improper  
6 impeachment. He's already said he does not remember any  
7 of these events, and he can not be cross-examined with  
8 extrinsic evidence.

9 THE COURT: Overruled.

10 BY MR. SNYDER:

11 Q And then they said that you kept them in the  
12 back of the police car for ten minutes.

13 You're saying you don't remember that; right?

14 A No, I don't.

15 Q Okay. And then they say that -- and I'll read  
16 this part carefully: "But the reporting party alleged  
17 that the deputies searched through items in the trailer,  
18 including cabinets; that their belongings were scabbered  
19 [sic] -- scattered; and that a piece of artwork was  
20 damaged."

21 You don't remember this; right?

22 A No, I don't.

23 Q And then this letter that I got from the  
24 prosecutor says, quote: "The deputies denied this."

25 You don't remember that; right?

1 A No.

2 Q And the next sentence is: "An internal review  
3 found that the deputies conduct was reasonable"; right?

4 A Yes.

5 Q And then it says that you were counseled for  
6 failing to articulate your reasons for the pat-down or  
7 detaining occupants in the car. You don't remember  
8 that; right?

9 A Correct.

10 Q Now, the letter skips over an important  
11 question, which is: Did you go inside the trailer?

12 A I would be pure speculation on how and why and  
13 the basis for it because I don't remember it. But if  
14 the letter's saying that I went in, I guess we can go  
15 based off of that.

16 Q Well, actually, the letter doesn't address  
17 that.

18 A Exactly. So I don't know. I wasn't -- I don't  
19 remember.

20 Q Okay. And you don't remember what you were  
21 doing for ten minutes while these citizens were in the  
22 back of the police car; right?

23 A I can tell you speculatively-speaking of what  
24 we would do if somebody had a warrant. If you want to  
25 hear that, I can tell you what we would do with that.

1 Q No. I'm asking what you remember about this  
2 event.

3 A I told you. I don't remember that event. I  
4 contact thousands of people inside of campers, RVs,  
5 everything like that.

6 Q But you've only had five personnel complaints  
7 in 11 years?

8 A Yes.

9 Q And this one resulted in counseling; right?

10 A Correct.

11 Q Did the prosecutors ask you any of these  
12 questions before sponsoring your testimony?

13 A About this letter?

14 Q Yeah.

15 A They brought it to my attention, but I don't --  
16 I don't remember.

17 Q Did they show you the underlying investigation?

18 A I read the first paragraph and the second  
19 paragraph of the paper, yes.

20 Q Today?

21 A Only today. Just right here in the room, right  
22 before I came in.

23 Q And that also didn't refresh your recollection  
24 in any way; right?

25 A I know I had a trainee named Wells at that

1 time. I don't remember the lieutenant that signed that  
2 report. Velasco? I don't -- I don't even know the --

3 MR. MAGANA: Objection, Your Honor. This is  
4 asked and answered. The witness has already said that  
5 he does not remember.

6 THE COURT: Overruled.

7 BY MR. SNYDER:

8 Q Did they ask you whether these things happened?

9 A If you're referring to the -- back in 2019 or  
10 today?

11 Q Yeah. I'm asking you: Did the prosecutors,  
12 who are sponsoring your testimony -- did they ask you  
13 whether these things in the report are true?

14 A The -- if you're referring to the complaint I  
15 received, yes.

16 Q And what did you say to that?

17 A I said -- well, I -- I don't remember that this  
18 complaint even existed. I know I have like five  
19 complaints, but I don't -- I can't even tell you what  
20 the other four are about. So when they show me the  
21 complaint, did this happen?

22 Yeah. Yeah, it happened. It's a complaint. I  
23 don't know any of the details about that. So when they  
24 asked me about that, that's what I told them.

25 Now, if I read in depth about it and I read

1       into it and I went back to the station and brought a --  
2       talked to the lieutenant, "Hey, do you remember this,"  
3       and we conversed about it, then I could probably get  
4       more refreshed. But ten minutes before I come here and  
5       only seeing a piece of paper, I can't recollect what  
6       happened on that event.

7       Q           These people didn't file a lawsuit against you;  
8       right?

9       A           No.

10      Q           They didn't ask for any money; right?

11      A           Not that I can remember, no.

12      Q           They -- they just filed a citizen complaint;  
13       right?

14      A           Yes.

15      Q           I can see your incentive for lying about this,  
16       but what was their incentive?

17                  MR. MAGANA: Objection, Your Honor. This is  
18       argumentative.

19                  THE COURT: Overruled.

20                  THE WITNESS: What was my reason to lie is what  
21       you asked?

22                  BY MR. SNYDER:

23      Q           No. Why would these citizens fabricate a  
24       complaint about you?

25      A           Well --

1 Q You denied it.

2 THE COURT: I don't think he said that.

3 MR. SNYDER: Well, the report --

4 THE COURT: He doesn't remember. And I  
5 actually think he said that -- that it could have  
6 happened, he just doesn't remember.

7 MR. SNYDER: I apologize. So the letter that I  
8 received from the Government, the last sentence of the  
9 first paragraph below "Clint Francisco" is: "The  
10 deputies deny this."

11 THE COURT: Oh, I see. Okay. Okay.

12 BY MR. SNYDER:

13 Q So why would they be making this up?

14 MR. MAGANA: Objection, Your Honor. This calls  
15 for speculation.

16 THE COURT: Well, I'm going to overrule that.  
17 But what I've heard him say is that he's had a few  
18 complaints -- five complaints, and that he doesn't  
19 really remember them. And I -- you know, I've given you  
20 a lot of leeway, but --

21 MR. SNYDER: It's my last question on this.

22 THE COURT: I -- I didn't catch that sentence  
23 because this is the first time I'm seeing it. And I,  
24 kind of, skipped over this. Does that sentence mean --  
25 let me ask the Government -- that the -- the deputies

1 denied the allegations in this complaint that you're  
2 referencing or -- or what's the significance -- I can  
3 see why defense counsel is asking about it, in other  
4 words.

5 But I -- I didn't see it earlier, which is why  
6 I kind of stepped in because I -- I see what he was  
7 trying to say. Did the deputies deny...

8 MS. MCKENNA: Your Honor, would be referring to  
9 a deny -- denial about a search of cabinets and any  
10 damage to a piece of artwork.

11 THE COURT: Oh, okay. Okay. So you can -- I  
12 mean, you can ask him to confirm that if you want to,  
13 Mr. Snyder.

14 BY MR. SNYDER:

15 Q It sounds like you don't remember one way or  
16 another what happened here; right?

17 A It's -- and that's why we document things in  
18 reports. And if I had a report about it, then yes. I  
19 could refresh my memory on that, but --

20 Q But if you've done something wrong, it wouldn't  
21 be in your report; right?

22 A If I did something wrong, I'd be up for an  
23 investigation. And I haven't had one of those.

24 Q Okay. I actually wasn't going to do this, but  
25 in light of this recent production, you've also been

1 | sued for lying in a police report; right?

2 A Um, it was on my partner's report. I was a --  
3 I was a responding deputy with him. So a bunch of  
4 deputies responded, my name got thrown into it.

5 Q Okay. How many people were sued in the case?

6 A I -- I don't remember. It was probably two --  
7 two or three. I think the handling and me.

8 Q And you're saying you were just thrown in  
9 there?

10 A Yes.

11 Q Okay. And the guy who sued you, Brian Norwood,  
12 he said that what you did was that you falsified a  
13 police report; right?

14 A Correct.

15 MR. SNYDER: I don't have any further  
16 questions, Your Honor.

17 THE COURT: Okay.

18 MR. MAGANA: Sorry. Permission to proceed,  
19 Your Honor?

THE COURT: Go ahead.

## ~~REDIRECT EXAMINATION~~

22 BY MR. MAGANA:

23 Q So before we get into, sort of, the substantive  
24 portion of this, there's one thing from the defendant's  
25 cross-examination that I want to be really specific

1       about from the beginning. And I want to make sure it's  
2       clear for the record: You and I met on November 7th;  
3       correct?

4       A           Yes.

5       Q           And during that time, did you bring to my  
6       attention that there was an error regarding who ran the  
7       searches in your declaration?

8       A           Yes, I did.

9       Q           Did I ask you about that beforehand or did you  
10      bring it directly to my attention?

11      A           I brought it to your attention.

12      Q           And why did you do that?

13      A           Because when I read the report, it -- it didn't  
14      seem correct. That's why I brought it to your  
15      attention.

16      Q           So did you do it because you wanted to be fully  
17      honest with the court?

18      A           Yes.

19      Q           And were you aware that I was going to disclose  
20      that to the defense attorney?

21      A           Yes, because I've never done this before. So I  
22      asked those questions -- just, I wasn't sure how  
23      specific it had to be and that's why I brought it to  
24      your attention if it had to be changed.

25      Q           Got it. So the reason -- the reason you

1       notified me about who ran that report was because you  
2       wanted to be honest with the court; correct?

3       A           Yes.

4       Q           So now, I'm going to go back to the beginning.

5                  THE COURT: So Counsel?

6                  MR. MAGANA: Yes, Your Honor.

7                  THE COURT: Did he do an amended declaration?

8       Did you let me know? What happened?

9                  MR. MAGANA: It was produced as a *Jencks*  
10      disclosure, Your Honor. The --

11                 THE COURT: But he -- but he -- but what I just  
12      heard is that he misstated or said something that was  
13      inaccurate in a declaration he filed in front of me that  
14      I'm supposed to rely on. And it didn't occur to you to  
15      supplement and file an amended declaration and explain  
16      what -- why or what happened. And you did it instead  
17      and gave it to defense counsel?

18                 MR. MAGANA: Your Honor, our perception was not  
19      that it was literally inaccurate, but it -- that it was  
20      an additional statement that would provide further  
21      clarification.

22                 THE COURT: It's not an addition -- it's --  
23      it's different though than what his declaration was  
24      there. He said in his declaration: "I ran these  
25      reports."

1 And now, you're saying that, "oh, no. He  
2 didn't run the reports. His secretary ran the reports,  
3 who we're going to have in here. And we're going to  
4 have Mr. Rios before this gets done."

5                   But I'm really troubled by your conduct here,  
6 Counsel. You should have immediately -- when -- when  
7 anytime a witness submits something under penalty of  
8 perjury and you, as a lawyer, find out that it's  
9 inaccurate, you've got to come immediately to the court  
10 and you have to file an amended declaration and explain  
11 why and that you just learned it. I should have had  
12 something on November 8th.

13 MR. MAGANA: Understood, Your Honor. I  
14 apologize to the court.

15                   THE COURT: Well, that undermines your  
16 credibility, just so you understand. It's not only his  
17 credibility, but it's your credibility that you've  
18 undermined by doing that. You should know better,  
19 Counsel. And I expect better of you.

20 MR. MAGANA: Yes, Your Honor. And I --

21 THE COURT: Go ahead.

22 | (Cross-talk.)

23 | MR. MAGANA: -- happen in the future.

24 BY MR. MAGANA:

25 Q Officer Francisco, you received a report of an

1        embezzled vehicle; correct?

2        A           Yes.

3        Q           On December 16th?

4        A           Yes.

5        Q           And did that contain the name of a suspect?

6        A           It did.

7        Q           And what was that name?

8        A           It was Franz Grey.

9        Q           And were you familiar with the name Franz Grey  
10      before that?

11     A           No.

12     Q           Did you make any attempt to gather information  
13      about Mr. Grey prior to responding to the call for  
14      service regarding the U-Haul?

15     A           Yes, I do.

16     Q           I misstated. Not the call for service, the  
17      embezzled vehicle report.

18     A           Yes.

19     Q           And what did you do?

20     A           I spoke with Deputy Haven to get the  
21      preliminary information. And then I had the secretary  
22      run Franz Grey's name in the -- through our databases,  
23      and she gave back, like, the CHEERS raps. And then I  
24      found out that he was -- had previous convictions for  
25      felonies and -- and a warrant for 245 and stuff like

1       that.

2       Q           And now, is it common practice to run a wants  
3               and warrants check prior to responding to a report of a  
4               crime?

5       A           Yes. Yeah. We do that on every -- everything  
6               that we work up or we go after or just from the common  
7               criminal that we pull off the street, we -- we do a  
8               workup just to see.

9       Q           But if you knew that you were going to meet  
10              with a -- a specific person who was reported, would you  
11              always run wants and warrants on them before  
12              encountering them?

13      A           Yes.

14      Q           Why is that?

15      A           Just to see their previous criminal history.  
16              Just to see how dangerous -- because we do a thing  
17              called rib (phonetic) sheet with which we can check off.  
18              And depending on the severity of it, that's -- we -- it  
19              gives us, like, a security alert, like how dangerous  
20              they can be.

21      Q           So outside of an emergency situation, would you  
22              ever go on a call without at least attempting to learn  
23              this information about the -- the suspect who is named  
24              in the call?

25      A           No.

1 Q And so tell me again, what information did you  
2 obtain regarding Mr. Grey when this wants and warrants  
3 check was run by the secretary?

4 A That he was -- he was a convicted felon for a  
5 hit-and-run and that he -- he only had the one  
6 conviction on his record and he had a couple  
7 misdemeanors and then that he had a warrant for the 245  
8 and then a misdemeanor warrant for that and that he was  
9 on the FBI terrorist watchlist.

10 Q So based on what you learned about Mr. Grey,  
11 did you have any concerns about interacting with him?

12 A Yes, I did.

13 Q What were those concerns?

14 A Especially not knowing what he was wanted for  
15 on the FBI terrorist watchlist, definitely had our  
16 suspicions higher than just running the normal person  
17 that's not because we look at the federal as a  
18 serious -- serious offense. And so I don't know why he  
19 would be on that. So yes, very alert.

20 Q There's a moment in your -- in your body camera  
21 footage when you state, quote, "we don't know what else  
22 this guy is wanted for."

23 Do you know what you were referring to in that  
24 moment?

25 A That he was on the FBI terrorist watchlist.

1 Q And you didn't know the reason?

2 A I did not know, no. Still don't.

3 Q And did you later learn that there was in fact  
4 more about the defendant that you didn't know in terms  
5 of convictions or anything else?

6 A Yes.

7 Q What did you learn?

8 A After I spoke with you, I found out about other  
9 criminal record out of other states.

10 Q Such as?

11 A There was a involuntary manslaughter.

12 MR. SNYDER: Objection. Relevance.

13 THE COURT: Sustained.

14 BY MR. MAGANA:

15 Q So I'll move on.

16 What did you -- what did you arrest the  
17 defendant for?

18 A The embezzled vehicle.

19 Q And what was your purpose in going to  
20 defendant's cabin that night?

21 A To look for the embezzled vehicle on the  
22 property.

23 Q And were you aware that there was a -- an  
24 anonymous tip regarding methamphetamine production?

25 A In the call for service. The -- the secondhand

1 info in that call for service, yep.

2 Q But that was not the purpose of your going out  
3 on that investigation; correct?

4 A No.

5 Q When you arrested the defendant, did you  
6 discuss your reasons why you had arrested him?

7 A Yes.

8 Q And did he tell you the U-Haul was stuck?

9 A He did.

10 Q Did it look stuck to you?

11 A Yes, it did.

12 Q So if the U-Haul looked like it was stuck, then  
13 why did you arrest him for embezzling a U-Haul?

14 A Just based on, you know, the length of time  
15 and -- I mean, that U-Haul was stuck, and he knows it's  
16 stuck. And you -- you know that they're going to be  
17 looking for their U-Haul. You could -- a reasonable  
18 amount of time just to go down and let them know what's  
19 going on. And especially knowing U-Haul, I took many  
20 embezzled reports and they try to contact -- even they  
21 go to their property and look for them, as well.

22 THE COURT: Why don't you just call a -- a tow  
23 truck and take the U-Haul away?

24 THE WITNESS: The U-Haul was literally on a --

25 THE COURT: Okay. So then why did you think he

1       was going to do anything with it then? I mean, it's  
2       been sitting there for weeks; right?

3           THE WITNESS: Yeah.

4           THE COURT: You know, in other words -- it  
5       doesn't make any sense why you would arrest him. You  
6       know it's stuck. You could have called the U-Haul --  
7       tow truck. And I'm just trying to understand why --  
8       what -- what was he going to do? You know, the U-Haul  
9       was there. And it wasn't going anywhere and, you know,  
10      it is what it is. And -- and, you know, certainly  
11      accumulated loads of late penalties, you know?

12           But anyway, go ahead.

13           MR. MAGANA: Well, I'll follow up on that,  
14      Your Honor.

15      BY MR. MAGANA:

16      Q       Had the U-Haul been reported stolen?

17      A       Yes.

18      Q       And is -- when someone rents something and  
19       keeps it for -- they rent it one for one night and they  
20       keep it for over a month, is that probative of -- I  
21       won't use the word "probative."

22           Does that indicate that they're unlikely to  
23       bring it back?

24      A       Yes.

25      Q       So in your experience, when someone rents a

1       vehicle and keeps it for a month longer than they rented  
2       it for, would you typically consider that vehicle  
3       embezzled after that amount of time?

4       A           Yes.

5       Q           The -- so did you find it credible that the  
6       defendant had not returned it simply because it was  
7       stuck, despite the fact that he had not ever made any  
8       attempts to contact U-Haul?

9       A           Yes. I knew that it was stuck, but I don't --  
10      the reason for the arrest is the fact that he didn't  
11      take the steps to notify them and that the vehicle is  
12      reported stolen. And when he's a named suspect on a  
13      report, that's what we do.

14      Q           Understood. And how -- just so everyone is  
15      aware -- about how far is defendant's cabin from  
16      Lake Aia (phonetic), like downtown Santa Clarita?

17      A           It's -- I mean, approximately like 20 minutes.

18      Q           So a short drive?

19      A           Yes.

20      Q           So given that you said earlier that you knew he  
21      was arrested for misdemeanor assault -- or excuse me,  
22      that he was wanted for misdemeanor assault with a deadly  
23      weapon, why didn't you arrest him for that?

24      A           Um, because when I detain somebody or they're  
25      arrested for another crime, I like to -- I don't like to

1 give them all that information because they become  
2 agitated and they don't want to talk to you and  
3 everything like that. So when I -- and I've done this  
4 numerous times where you -- hey, I -- I'm not here  
5 to prove a point. I'm not here to tell them everything  
6 that they've done bad. We just got to get to the bottom  
7 of it, and we're there for the U-Haul. That's why I  
8 didn't tell them about that.

9 Q So did you book him on that warrant when you  
10 reached the station?

11 A Yes, we did.

12 Q So upon your arrival at the property, you took  
13 steps to secure the perimeter of that property; is that  
14 correct?

15 A Yes.

16 Q Why did you do that?

17 A To make sure that there is -- we tried to  
18 conduct the investigation on the embezzlement, like the  
19 paperwork that I explained earlier. So I want to make  
20 sure that there's no other people on the property that  
21 could harm us.

22 Q So I think defense counsel asked why you  
23 couldn't, sort of, just grab Mr. Grey, put him in the  
24 car, and leave immediately.

25 Tell me why you couldn't do that?

1 A For -- if -- what if there was something inside  
2 the truck that we didn't find. I -- we -- we have -- we  
3 have to look in the truck. We've got to make sure what  
4 the engine's missing. We've got to document that the  
5 engine's missing. We've got to get serial numbers.

6 It's more involved than just taking somebody  
7 away. We have to -- we still have to give that stolen  
8 property back to the U-Haul and that's what would --  
9 does happen next and transpired.

10 Q I was just -- I was just going to ask. So did  
11 you then remove the U-Haul?

12 A We -- we were finishing the protective sweep.  
13 And then when I contacted Mr. Grey, we went with the --  
14 on his permission to go grab the keys and the cell  
15 phone. So we didn't get to that portion of that yet.

16 Q So on your body camera video, about 14 minutes  
17 after you arrive, you tell the deputies to -- and I'll  
18 quote it: "Hold the front and pull back to the cars."

19 What did you mean when you said that?

20 A Just so I can do my interviews with the -- the  
21 suspect at that time.

22 Q Well, but -- but why were you telling the  
23 deputies -- when you tell them to fall back to the cars,  
24 what are you telling them?

25 A Because we're on a dark hillside and we have

1       loud music blaring out of this little house and we have  
2       a mobile home and we have a couple other cars on the  
3       property, we have to do a protective sweep near the  
4       house in the back. I wanted to make sure that nobody  
5       came out and contacted us I had my back turned while I'm  
6       talking to Mr. Grey.

7       Q           And so is that what you -- and so that's what  
8       you meant when you said "hold the front of the house"?

9       A           Yes.

10      Q           While you were talking to the defendant, how  
11       would you characterize your conversation?

12      A           Good.

13      Q           Did you have your -- and I know you said you  
14       had your gun drawn initially when you approached, but  
15       did you have your gun drawn when you were talking to  
16       him?

17      A           No.

18      Q           Did you -- did the defendant at any point  
19       appear scared or threatened?

20      A           No.

21      Q           Did he appear to be aware of his rights?

22      A           Yes.

23      Q           Would you say your interaction was  
24       conversational?

25      A           Yes.

1 Q So what else -- in addition to the embezzled  
2 U-Haul, what else -- and the -- you know, the laundry  
3 chemicals referred to earlier, what else did you discuss  
4 with the defendant?

5 A He told me that -- he kept referring to these  
6 two guys that came up to his property and shot his house  
7 up and that they were trying to rob him and stuff. So I  
8 was actually concerned for him, and that's why I was  
9 investigating that, as well.

10 Q And did you in fact investigate those claims?

11 A Yes, I did.

12 Q What did you do to investigate them?

13 A He told me that they shot at his windows and  
14 shot around the -- tons of bullets were coming through  
15 the house. And so I checked the back wall. I checked  
16 the -- the windows and checked to see if any bullet  
17 impacts have happened in that area, and I also asked to  
18 see if there's any video.

19 MR. MAGANA: And so for the court's record, I  
20 would just refer to Exhibit 4 at time 22:50. I don't  
21 believe we need to play it, but you can see the deputies  
22 looking for bullet holes and discussing the report.

23 BY MR. MAGANA:

24 Q So at some point, did you offer to lock up then  
25 Mr. Grey's house following his arrest?

1 A Yes.

2 Q Why?

3 A To -- because he -- he was concerned about his  
4 property to -- that it was going to get burglarized or  
5 robbed. So I wanted to secure his property.

6 Q And is that something you typically do?

7 A No.

8 Q So you did it only in response to his request?

9 A Because he requested it.

10 Q And did he -- you mentioned -- I think you  
11 mentioned it briefly, but did he ask to do anything  
12 else?

13 A Yeah, after -- during the course of our  
14 conversation about the two men that came to shoot up his  
15 place, he said that he actually captured video of it on  
16 his surveillance cameras, of the shooting, and that I  
17 could find that -- I guess he uploaded it to Youtube,  
18 but it was in offline mode because they cut the  
19 telephone cords. So reasonable -- he said that it was  
20 saved on his phone and that he wanted me to look at that  
21 video on his phone.

22 Q So before you entered his house, you -- you  
23 determined that you were going to conduct a protective  
24 sweep of the interior; is that correct?

25 A Yes.

1 Q What factors do you normally consider when  
2 deciding if a protective sweep is necessary?

3 A The -- all the elements that we had stated  
4 previously: His record, that he was being arrested for  
5 a felony, that he has a 245 warrant, and then that  
6 there's multiple cars on the property, there's a --  
7 there's a mobile home.

8 Q So why don't I -- I'll -- I'll slow it down a  
9 little bit. Was there anything on the property that  
10 would lead you to believe there were multiple people  
11 present?

12 A There was multiple cars on the property.

13 Q When you say "multiple cars," what do you mean?

14 A There was a Tesla, a Camaro and a -- like a  
15 motor home.

16 Q And were there also multiple living structures?

17 A There was a residence behind Mr. Grey's house.

18 Q And if you had already conducted an exterior  
19 sweep of that property, why didn't you know at that  
20 point whether there was anyone inside it or not?

21 A Because the windows and -- were boarded up.  
22 They had curtains in the windows, and there's loud,  
23 blaring music from inside the property.

24 Q So you said there were indications that  
25 multiple people could be present. Was there anything to

1 indicate that those people could be dangerous?

2 A Yes.

3 Q And what would that be?

4 A The -- you know, criminals hang out with  
5 criminals. And when -- I dealt with numerous situations  
6 where we go near a house and somebody puts in --  
7 themselves with a firearm or something like that where it  
8 turns into a confrontation.

9 Q And I think -- I think you alluded to them  
10 earlier, but in terms of things you knew about defendant  
11 that might have suggested that the people he went  
12 with -- was with would be dangerous?

13 A Yes.

14 Q And what were those things?

15 A That he was on the FBI terrorist watchlist for  
16 unknown reasons and that he -- he had the warrant for  
17 the 245. And also, that he -- he's been previously  
18 convicted of a felony.

19 Q And just to be clear, what is -- when you say  
20 "245," what is that?

21 A Assault with a deadly weapon.

22 Q So you were concerned that there was  
23 potentially someone else inside the house who could be  
24 dangerous?

25 A Yes, absolutely.

1 Q So I'm going to play a few clips from your body  
2 camera footage and ask you about them.

3 A Okay.

4 MR. MAGANA: Your Honor, I'd request permission  
5 to play three clips and publish. The first one is  
6 Exhibit 4 at eight minutes and 50 seconds.

7 Sorry, Your Honor. May I have just a moment to  
8 start up my computer?

9 THE COURT: Yeah.

10 MR. MAGANA: So I'll ask counsel to go ahead to  
11 eight minutes and 50 seconds on this video.

12 (Whereupon, video is played in open court.)

13 BY MR. MAGANA:

14 Q So when you say, "make sure no one runs out the  
15 back," why did you say that?

16 A Because it's very common when people inside see  
17 law enforcement outside that they start to scramble out  
18 all -- all avenues of exit out of a house.

19 MR. MAGANA: And so now, this is going to be a  
20 slightly confusing request. Rather than the time stamp  
21 on the video, would you go on the clock at the top to  
22 seven -- seven hours, seven -- 50 minutes and  
23 50 seconds.

24 MS. MCKENNA: It's at 19 hours.

25 MR. MAGANA: Yeah, 19 hours, 50 -- and

1       50 seconds. Perfect.

2                     (Whereupon, video is played in open court.)

3                     MR. MAGANA: You can pause it there.

4                     BY MR. MAGANA:

5                     Q                     So that's the comment we referred to earlier  
6                                     about holding the house. Why are you telling them to  
7                             "hold the front of the house"?

8                     A                     Because we haven't cleared the inside of the  
9                                     house so there could still be people inside.

10                    MR. MAGANA: And referring to Exhibit 10 at  
11                             6:16. That's the time stamp.

12                     (Whereupon, video is played in open court.)

13                     BY MR. MAGANA:

14                     Q                     So I hear Sergeant Rios saying, "No one's going  
15                                     to pop out," and you saying, "He says, no."

16                     Did you believe him at that time?

17                     A                     No.

18                     Q                     And would you say that Sergeant Rios asking  
19                                     again, "No one's going to pop out," is indicative of his  
20                                     concern that there is someone in there?

21                     MR. SNYDER: Objection. Calls for speculation.

22                     THE COURT: Sustained.

23                     BY MR. MAGANA:

24                     Q                     Were you concerned that there was someone in  
25                                     there?

1 A Yes.

2 Q In your ten years as -- as a law -- of  
3 experience as a law enforcement officer -- I think it  
4 might be up to 11 now -- is it common for someone hidden  
5 inside property to come out voluntarily when there are  
6 multiple officers on the scene?

7 A No.

8 Q Why?

9 A Because they're -- there are multiple reasons.  
10 They can be afraid of apprehension because they have  
11 arrest records or they're -- you know, they -- they just  
12 don't want to have any interaction with law enforcement.  
13 We've made numerous call-outs before at houses and  
14 people don't come out. And they end up being inside.

15 Q So tell me a bit about Mr. Grey's cabin. How  
16 big was it?

17 A It was fairly small. It was -- it's like a --  
18 it was a living room and a bedroom and a kitchen, like  
19 another like little -- small, little foyer in the left  
20 with just tons of -- tons of garbage and stuff inside of  
21 it.

22 Q And could you see into each of these rooms from  
23 where you were standing at the front door?

24 A No.

25 Q So were there -- so there were other areas of

1           the cabin that you could not see upon entering?

2       A           Yes.

3       Q           Is that part of why the protective sweep was  
4           necessary?

5       A           Yes.

6       Q           So in your ten years of experience as a law  
7           enforcement officer, is there a practical reason you  
8           needed to conduct a protective sweep rather than just  
9           running in, looking around very quickly, and trying to  
10          find Mr. Grey's items?

11       A           Yes.

12       Q           What is that?

13       A           I had a similar incident where a house needed  
14          to be searched for some evidence after a suspect ran  
15          inside, and it was not cleared properly. And I found  
16          the -- the suspect hiding in a closet after doing our  
17          search for that evidence.

18       Q           And do people generally when they're hiding  
19          respond well to being suddenly discovered or having law  
20          enforcement enter?

21       A           No.

22       Q           And before you entered the cabin, did you know  
23          exactly where the defendant's phone was?

24       A           He said that it was on the dining room table.

25       Q           And did you know exactly where his keys were?

1 A No.

2 Q And how would you describe the dining room  
3 table?

4 A It was very cluttered.

5 Q So did you know how long it would take you to  
6 find the defendant's phone and keys?

7 A No.

8 Q So at the time you conducted the protective  
9 sweep, you didn't know if you were going to be looking  
10 for them for 30 seconds or ten minutes?

11 A Correct.

12 Q So when you then entered the defendant's cabin,  
13 what, if anything, did you find while conducting the  
14 sweep?

15 A We found -- when we were going through the  
16 dining room table, the -- they saw the methamphetamines  
17 on the table and the pipe right near his cell phone.  
18 And then we continued to do the protective sweep.

19 Q So did you stop to investigate those things at  
20 that time?

21 A No.

22 Q Why not?

23 A Because that's the least of my worries at that  
24 point.

25 Q What were you concerned about?

1 A Somebody hiding or possibly having a firearm or  
2 something around the corner.

3 Q Now, did finding meth or meth paraphernalia  
4 form the basis for the protective sweep?

5 A No.

6 Q Did it, however, inform that people inside  
7 could be dangerous?

8 A Yes.

9 Q Why?

10 A Because people act erratic on methamphetamines  
11 or any drug.

12 Q You said earlier that you responded to this  
13 call to investigate a stolen vehicle report?

14 A Yes.

15 Q During that time, did you encounter additional  
16 potential evidence that could have suggested there was  
17 methamphetamine manufacturing happening?

18 A Just from that call for service.

19 Q Well, did any of the deputies report anything  
20 to you that they thought that there might have been, you  
21 know, something meth-related going on?

22 A Yeah. Deputy Marin told me about -- in -- in  
23 the beginning -- about the chemicals that he saw in the  
24 back.

25 Q So if you go to investigate one thing and you

1 encounter evidence of another possible crime, are you  
2 required to investigate only the thing that you set out  
3 to investigate?

4 A No.

5 MR. SNYDER: I'll object to a hypothetical,  
6 too, then.

7 THE COURT: Sustained.

8 BY MR. MAGANA:

9 Q When you found -- or when you received a report  
10 that there was potential meth precursor chemicals, did  
11 you investigate them?

12 A Yes, sir.

13 Q Did you feel that was within your  
14 responsibility?

15 A Yes.

16 Q Did you determine that they were an issue or  
17 not an issue?

18 A They were not an issue.

19 Q And so if they were not an issue, why didn't  
20 you feel the need to include them in a subsequent  
21 report?

22 A Because I didn't arrest him for it so those  
23 details aren't pertinent to that.

24 MR. MAGANA: May I have just one moment,  
25 Your Honor?

1 THE COURT: Yep.

2 MR. MAGANA: Thank you, Your Honor.

3 No further questions.

4 MS. MCKENNA: Your Honor, I -- I apologize.

5 Could we possibly just take a quick bathroom break?

6 THE COURT: No. We're going to end at 4:30  
7 anyway because we're -- we're not -- we're going to  
8 continue this on December 18th, so we'll continue the  
9 hearing. So we're going to end in ten minutes. So...

10 MR. SNYDER: If -- if counsel doesn't mind, do  
11 you need to be here or do you want to take a break?

12 MS. MCKENNA: I -- I apologize. I have a blood  
13 sugar issue. I would just need to eat first.

14 THE COURT: Okay. Well, you can leave if you  
15 want, and then come back. Yeah.

16 **RECORDS EXAMINATION**

17 BY MR. SNYDER:

18 Q So one of the words that you used a number of  
19 times was "concerned." One of the things you said was  
20 that you were particularly concerned about Mr. Grey  
21 being on the terrorist watchlist; right?

22 A Yes.

23 Q You didn't call anyone from federal law  
24 enforcement; right?

25 A No.

1 Q You didn't call Homeland Security; right?

2 A No.

3 Q You didn't call the Terrorist Screening Center  
4 or the Threat Screening Center or anything like that;  
5 right?

6 A No.

7 Q You said that you were concerned about the  
8 sanctity of Mr. Grey's home and things being locked up  
9 there; right?

10 That was your testimony?

11 MR. MAGANA: Objection, Your Honor. Misstates  
12 testimony.

13 THE COURT: Overruled.

14 THE WITNESS: I didn't say the sanctity of his  
15 house. I don't -- what are you referring to?

16 BY MR. SNYDER:

17 Q You said that you were worried about his home  
18 being unlocked; right?

19 You said you were concerned about that?

20 A Yes.

21 Q Okay. But then you also said that you don't,  
22 as a matter of course, lock people's houses for them;  
23 right?

24 A Unless in this case, he requested it, yeah.

25 Right.

1 Q Right. But not as a matter of course; right?

2 Just to be clear.

3 A Not as a matter of course, no.

4 Q Did you actually lock up the house?

5 A Yes.

6 Q Are you sure about that?

7 A Yes.

8 Q When did you lock it up?

9 A We -- we just -- from the back, we just closed  
10 the door.

11 Q Did you lock the house with the keys?

12 A No, because I -- we had a bunch of key chains  
13 that we booked as evidence. We weren't sure where these  
14 keys were. The house was in shambles.

15 Q Okay. You talked with the prosecutor about,  
16 kind of, the basis for your protective sweep; right?

17 A Yes.

18 Q And you said -- one of the things you said was  
19 that you have to consider all the elements; right?

20 A Yes.

21 Q And you said that, you know, at the time that  
22 you made the decision, you didn't know whether there was  
23 someone inside; right?

24 A Correct.

25 Q Now, on the video, you said that the house was

1 unsecured; right?

2 A It was unlocked.

3 Q And the reason that you were going to go into  
4 the house was to get Mr. Grey's keys and lock the door;  
5 right?

6 A And the cell phone.

7 Q Right. If there was someone inside the house,  
8 it wouldn't have been unsecured; right?

9 A We don't know that.

10 Q Well, what would be the point of going inside  
11 and locking the door if there was a resident in the  
12 house? Why would you need to do that?

13 A That's purely speculative. I don't know why  
14 they -- somebody would lock or unlock a door. I -- I  
15 don't -- that's not what I'm worried about that the door  
16 being unlocked. I'm worried somebody's inside the  
17 house.

18 Q But the point of you going inside the home, you  
19 said, was to go and lock the door and get the phone;  
20 right?

21 A Yes.

22 Q Okay. But if there was someone inside the  
23 house, they wouldn't need you to lock their door; right?

24 A I don't know that.

25 Q You said that the house was unsecured; right?

1 A Yes.

2 Q And Sergeant Rios, after looking inside  
3 Mr. Grey's front door without a warrant, said that  
4 there's nobody inside the house; right?

5 A That they could see from that front door area.

6 Q And just before you did the protective sweep --  
7 actually, on one of the clips you said that you were  
8 going to do a protective sweep, using your words, "just  
9 in case, so nobody pops out"; right?

10 A Yes.

11 Q You didn't know whether there was someone  
12 inside the home or whether there wasn't; right?

13 That's your testimony?

14 A I did not know, no.

15 Q And you had no evidence that there was an armed  
16 and dangerous person in the home; right?

17 A There could have been.

18 Q Other than the generalities that you usually  
19 use, you had nothing specific; right?

20 A Not that second, no.

21 MR. MAGANA: Objection, Your Honor. Misstates  
22 testimony.

23 THE COURT: Overruled.

24 BY MR. SNYDER:

25 Q One of the reasons that you gave was that

1                   criminals hang out with other criminals; right?

2         A           Yes.

3         Q           You also listed that, you know, Mr. Grey had  
4                   this history -- you know that -- that gave -- gave you  
5                   concern; right?

6         A           Yes.

7         Q           Mr. Grey was in the car at the time that this  
8                   happened; right?

9         A           Yes, he was.

10        Q           And during the, at this point, 40 minutes he'd  
11                  been at the property, you didn't see any evidence of  
12                  movement inside the home; right?

13        A           No.

14        Q           And -- and in fact the prosecutor played you a  
15                  number of -- of clips. The first was the clip where you  
16                  said, "Make sure nobody runs out the back"; remember  
17                  that?

18        A           Yes.

19        Q           The time stamp on that was 7:45 p.m.; right?

20        A           Okay.

21        Q           That was about eight minutes after you arrived;  
22                  right?

23        A           Yes.

24        Q           And then at 7:50, he played you a clip where  
25                  you said, "Why don't you guys hold the front."

1                   That was 13 minutes after you arrived; right?

2   A               Yes.

3   Q               And then he played you a clip from after that,  
4                   but I guess my question is: After you had made sure  
5                   that nobody runs out and held the front and opened  
6                   Mr. Grey's front door without a warrant and looked  
7                   inside and had cleared the RV and the property on the  
8                   back and had run the cars for VIN numbers or anything  
9                   like that, you didn't have evidence of another person  
10                  being in the home; right?

11   A               Not that I know of, no.

12   Q               And you didn't have evidence of an armed and  
13                  dangerous person being in the home; right?

14   A               Correct. The music's still blaring from  
15                  inside.

16   Q               It would just be, kind of, speculation and  
17                  generalities; right?

18   A               With everything that I've said, yes.

19   Q               What else did you say?

20   A               Well -- well, we talked about the -- his  
21                  background, the history, the dark -- in the dark area.  
22                  We've got no radio communication, no cell phone  
23                  communication, multiple cars on the property. All of  
24                  that stuff was still very much in play. It didn't -- it  
25                  didn't go away the longer I'm there. That is still a

1       very live situation until it's either cleared or we  
2 leave.

3       Q           Well, what was the point of clearing the  
4 property for officer safety if you didn't learn  
5 anything? Didn't you say you spent 35 minutes clearing  
6 the property for officer safety before this?

7       A           I wouldn't say 35 minutes.

8       Q           Well, I will represent to you that 35 minutes  
9 passed. And during that time you said that you were  
10 clearing the property for officer safety; right?

11      A           I was walking back and forth to make it -- to  
12 check the VIN number on the -- in the U-Haul truck and  
13 checked the plate. And I also conducted my interviews  
14 with the suspect in the back of the car. I wasn't  
15 clearing the location the whole time, no.

16      Q           And then you said that going inside the home to  
17 get someone's keys and lock the doors is not something  
18 that you do, kind of, in every cases; right?

19      A           Correct.

20      Q           You were doing it here because you were  
21 concerned about Mr. Grey's house being unlocked and you  
22 wanted to help him; right?

23      A           Yeah. It was a rare occurrence that this even  
24 happens, yes.

25      Q           But there was no -- there's no urgent need, no

1 law enforcement purpose for you to go in the home;  
2 right?

3 A Only on his request is why I went in.

4 Q Okay. But you said that it was super  
5 dangerous, and you knew that before going inside?

6 MR. MAGANA: Objection, Your Honor. Misstates  
7 testimony. He did not say it was "super dangerous."

8 THE COURT: Sustained.

9 BY MR. SNYDER:

10 Q Okay. Well, you said that the reason you  
11 needed to conduct the protective sweep inside the home  
12 was because there are all these hazard inside the home  
13 that have not yet been addressed; right?

14 That was your testimony?

15 A Yes.

16 Q But you went inside the home for a reason that  
17 you don't usually go inside the home; right?

18 Right?

19 A Yes. Only on the basis that we get to do the  
20 protective sweep. Otherwise, you're right. I would not  
21 go inside the house.

22 Q Let's -- well, that actually brings me to  
23 another question which is: When you were talking to  
24 Mr. Grey, you told him that you were going to get the  
25 phone and keys and then lock the door; right?

1 A Yes.

2 Q And then you turned around and you talked to  
3 Rios; right?

4 A Yes.

5 Q And you guys decided at that point with the  
6 camera recording that you were going to do a protective  
7 sweep; right?

8 A Yes.

9 Q Did you take two steps back to the car to tell  
10 Mr. Grey, "Hey, Mr. Grey, I said that, you know, we're  
11 only going in for these limited purposes. What we're  
12 actually going to do is a search of your house?"

13 Did you do that?

14 A It wasn't a search.

15 Q Well, you went into every room in his home?

16 A It was a protective sweep.

17 Q My question is: Did you go back and tell him  
18 that you were no longer going to do that and instead  
19 were going to go into the other parts of his home?

20 A No.

21 MR. SNYDER: No further questions.

22 MR. MAGANA: Redirect, Your Honor.

23 THE COURT: I'm sorry?

24 MR. MAGANA: Redirect, Your Honor.

25 THE COURT: Yeah. Go ahead.

1 MR. MAGANA: Very brief.

2 **REDIRECT EXAMINATION (FURTHER)**

3 BY MR. MAGANA:

4 Q When you were on the exterior of the property,  
5 could you see inside the house?

6 A No.

7 Q Why not?

8 A There was boards everywhere and there's  
9 curtains.

10 Q Could you hear what was going on inside the  
11 house?

12 A No.

13 Q Why not?

14 A The music was way too loud.

15 Q Did you know to a certainty that there was  
16 someone inside?

17 A No.

18 Q Did you believe that there could be someone  
19 inside?

20 A Yes.

21 Q Did you believe that the person inside could  
22 present a danger?

23 A Yes.

24 Q If there was one?

25 A Yes.

1 Q Do you -- in your training, are you aware of  
2 any obligation to notify an individual who consents to  
3 entry that you will conduct a protective sweep?

4 A No.

5 MR. MAGANA: No further questions, Your Honor.

6 THE COURT: Anything else?

7 MR. SNYDER: No, Your Honor. Thank you.

8 THE COURT: I just have a few questions.

9 So -- just so we're kind of following up with  
10 the two lawyers that have been asking you --

11 THE WITNESS: Yes, sir.

12 THE COURT: -- you had no information from any  
13 source that any other people lived there, other than the  
14 defendant; is that correct? Lived at the house?

15 THE WITNESS: Yes, sir.

16 THE COURT: Okay. So then your concern about  
17 whether or not someone else was there was just based on  
18 everything that you've testified to today?

19 THE WITNESS: Yes.

20 THE COURT: Okay. And the -- the -- so you --  
21 you said that there was a -- that you knew before you  
22 went to the -- to the house that there was an arrest  
23 warrant for the defendant; right?

24 THE WITNESS: Yes.

25 THE COURT: And -- and at least that's what you

1       said in your declaration. And the defense counsel asked  
2       about whether or not -- why it wasn't in other part of  
3       your -- in the search warrant.

4                   So -- and the arrest warrant was for assault  
5       with a deadly weapon. And so I'm just trying to  
6       understand why -- once you had -- knew that information,  
7       why didn't you just go in and arrest him for that and  
8       then be done with it? I mean, that's far more serious  
9       than embezzling a -- you know, essentially a stuck  
10      U-Haul van; right?

11                  Why -- why go through all of this and keep it  
12      premised -- everything you're doing premised on the  
13      embezzlement of the U-Haul when assault with a deadly  
14      weapon warrant -- that's a very serious thing. And what  
15      I'm hearing from you is that you didn't think that was  
16      that important, that you were going to use these -- the  
17      embezzlement as an issue to do that because once you  
18      have the -- once you knew there was a warrant there, you  
19      didn't need to do any of this stuff that we're here  
20      today. You just needed to go in and arrest him. And in  
21      fact -- so why? I'm just curious why you did that.

22                  THE WITNESS: Yeah, because the assault with a  
23      deadly weapon is very serious.

24                  THE COURT: Yeah.

25                  THE WITNESS: I do agree with you compared to

1       embezzled --

2                     THE COURT: Yeah, particularly once you -- once  
3       you -- once you know the van is -- I mean, the truck is  
4       stuck, then it becomes really less important because you  
5       know -- that putting aside who should have called and  
6       whether he got -- should have called them and everything  
7       else --

8                     THE WITNESS: Yeah.

9                     THE COURT: -- you know that that's pretty  
10      serious. Why didn't you do -- why didn't you just go  
11      ahead and arrest him. And then it's all over and done  
12      with.

13                  THE WITNESS: No, I understand that it's -- it  
14      was a misdemeanor --

15                  THE COURT: Yeah.

16                  THE WITNESS: -- warrant. It wasn't a felony  
17      warrant. So even if Mr. Grey took off running and he  
18      ran into his house for having a misdemeanor, you know,  
19      we're done at that point. I don't enter homes for  
20      misdemeanors. It's like -- like you're saying, it's  
21      very minimal on that portion.

22                  So I think just due to the classification of  
23      it. And, you know, even with the embezzled vehicle --

24                  THE COURT: Yeah.

25                  THE WITNESS: -- somebody that runs into a

1 house in an embezzled vehicle isn't even an issue for  
2 us. Like, I'll write who and what suspects are in that  
3 house. And that's what we'll do. We'll leave it at  
4 that. We'll write the paper on it. And then, we'll --  
5 you know what I mean? We'll -- that's where we leave  
6 it. And then we don't --

7 THE COURT: Okay.

8 THE WITNESS: So it -- it's more of a, if I  
9 catch a guy on the street, walking down the road, the  
10 guy got a 245 warrant, I don't know yet what it's for  
11 because one, they don't -- they don't air it to us as a  
12 felony or a misdemeanor. We treat it as a -- because  
13 there's a big difference in severity from a 245 -- I've  
14 seen the weakest 245s where it's, you know, it's -- it's  
15 not the same classification as somebody that got stomped  
16 out by five people and that guy was totally defenseless;  
17 right?

18 THE COURT: Sure.

19 THE WITNESS: We don't get that story. So when  
20 I hear 245 felony, I know the court's doing a good job  
21 at it -- so when I hear misdemeanor, I'm not downplaying  
22 it. I still think it's a very serious crime.

23 THE COURT: Sure.

24 THE WITNESS: But I -- I used that based on my  
25 tactic of, like, am I going to go beat this guy's door

1 down for a misdemeanor 245? And that -- the answer to  
2 that would be no. So I was going based on that he was a  
3 named suspect on the embezzlement report of the felony.

4 THE COURT: So -- just so the -- so in terms of  
5 running the warrants check, again, irrespective of  
6 whether you ran it or a secretary ran it -- it's just so  
7 I understand. It's -- based on your declaration, you  
8 ran it before you arrived at that property; right?

9 THE WITNESS: Correct. I had the secretaries  
10 run that information for us.

11 THE COURT: Right.

12 THE WITNESS: And they usually give us the  
13 printouts. And that's the papers that we read and we  
14 look at in the office. And then we usually go out with  
15 that information.

16 THE COURT: The printout is the one that's in  
17 the record; right? The print out that we have? It's  
18 the printout that we have?

19 THE WITNESS: The record that you guys have in  
20 the exhibit book --

21 THE COURT: Yeah.

22 THE WITNESS: -- I think that's just from  
23 the -- the Defense pulling a record off the computer  
24 that was ran from the MDC. And even when he ran it --  
25 like, when there's multiple deputies there and we all

1 have -- I use my partner's computer sometimes, and they  
2 can use my computer.

3           And we run stuff all the time. Like, if they  
4 ran a VIN number, it doesn't necessarily mean I ran the  
5 VIN number. It could have been my partner that used my  
6 computer to run that VIN number.

7           So that document that he pulled off of that was  
8 from my MDC in my car. And that was a warrant returned  
9 from him because we use standard protocol to check  
10 everybody's information even -- even if we know who they  
11 are, just because it's -- we're trained to do that. So  
12 it's like second nature of what we do. Anybody that we  
13 run, we run them for their records and stuff like that  
14 on the computer, which we know is CAD.

15           THE COURT: Yeah.

16           THE WITNESS: So -- and that's -- that's how  
17 we -- that's how that document was probably produced.

18           THE COURT: And -- and when you did the -- when  
19 you had the -- you know, when you had knowledge of the  
20 arrest warrant, why -- it's -- you know, you -- once you  
21 arrest someone and you arrested him at his house, you  
22 know you can usually do a search incident to arrest.  
23 Why go forward with the search warrant?

24           THE WITNESS: Just based on the fact that  
25 because we were only there for the embezzled U-Haul. I

1       wasn't -- was not there to do anything else. And  
2       like -- like we've discussed here today is if there's  
3       other crimes, I don't turn a blind eye to it. If  
4       there's been a crime, I'm going to investigate it. If I  
5       see people tied up in a basement, I'm going to  
6       investigate why do you have people tied up in your  
7       basement. I'm not going to say, "I'm only here for the  
8       U-Haul, and I want to get out of here as fast as  
9       possible."

10           That's -- that's not what I like to do. So if  
11       my partner tells me there's chemicals, I verify it,  
12       nope, those aren't chemicals. And now -- so the search  
13       warrant was based on the fact that I -- we were done. I  
14       was getting his cell phone and keys to leave his  
15       property and lock his property up. And we did our  
16       protective sweep because I would never enter the house  
17       without doing one, and subsequently, found the ammo and  
18       everything like that. And then that's when I requested  
19       a search warrant because he's not supposed to have ammo.

20           THE COURT: Okay. And did you see any signs  
21       that Mr. Grey had tried to dislodge the -- the U-Haul.

22           THE WITNESS: Yeah. Yeah, we did.

23           THE COURT: You did?

24           THE WITNESS: I -- it looked like it would be a  
25       multi-person -- like, it's a big U-Haul in the hill. I

1 still don't know how it got there, to tell you the  
2 truth. But there was winches. Like, it looks like they  
3 bought from Harbor Freight like five winches. But it  
4 looks like it was parked up possibly on top of, like, a  
5 little plateau, and it looks like it slid down.

6 THE COURT: Okay. And so -- okay. Well, I  
7 think that's it on my end.

8 Do any of you want to follow up at anything at  
9 this point? Otherwise, we can...

10 MR. MAGANA: Not from the Government,  
11 Your Honor.

12 THE COURT: Okay.

13 MR. MAGANA: Your Honor, we would like to  
14 cross-examine the defendant, but I understand that will  
15 probably not be today.

16 THE COURT: Well, I don't know that -- I mean,  
17 if this is all that's done, I would -- I -- I -- the  
18 defendant has his declaration; right? Just the  
19 declaration he submitted?

20 MR. SNYDER: Yes.

21 THE COURT: How long is it going to take?

22 MR. MAGANA: Our cross would be limited to the  
23 declaration, Your Honor. I think, depending on how it  
24 goes, we could probably get it done before 5:00 p.m.

25 THE COURT: Okay. Let's -- let's get it over

1       with because I think -- I think I'm going to maybe  
2       limit -- just finish up today then if we can. Unless  
3       you -- unless the two of you feel -- have any different  
4       feeling about the other witnesses.

5           I mean, I -- I don't feel that strongly about  
6       it at this point. If -- and I know I had asked for Rios  
7       to be here, but I'm -- you know, I'll leave it up to you  
8       guys. If you want any other witnesses to be brought, we  
9       can do it in a couple weeks.

10          MR. SNYDER: It's certainly our position that a  
11       lot of this activity is warrantless. It's the  
12       Government's burden. We don't have any particular need  
13       to cross-examine these additional witnesses.

14          The record is what it is. And if there's not  
15       something there, then that's -- that's their  
16       responsibility. So...

17          THE COURT: That's fine then. Why don't we  
18       just then end it today then. And then close the record  
19       today. And then -- because I even -- if -- I think if I  
20       wanted to bring you guys in the week of the 18th, I  
21       doubt -- the holidays and everything -- I'd get people  
22       here anyway, but maybe. Let's -- I'll excuse this  
23       witness then for now. I'm going to excuse you for now  
24       in case something comes up. But you'll be excused, but  
25       just with the understanding that there may be a need to

1 call back. And then we'll put the defendant on the  
2 stand.

3 Okay. Thank you.

4 THE WITNESS: I'll just wait outside?

5 THE COURT: Yeah. You wait outside.

6 THE WITNESS: All right, sir.

7 (Whereupon, the witness leaves the courtroom.)

8 THE COURT: Yeah. Why don't we take a quick  
9 five-minute recess? What? Is that what you need? I'd  
10 rather keep -- what?

11 THE COURT REPORTER: No.

12 THE COURT: Okay. Let's keep going.

13 MR. SNYDER: Your Honor, the -- the Defense  
14 calls Mr. Grey who submitted a declaration. As the  
15 Court probably imagines, I'm going to be -- if things go  
16 beyond the scope of his declaration -- objecting on  
17 5th Amendment --

18 THE COURT: These things are usually very  
19 short; right? So it shouldn't be more than a few  
20 minutes.

21 MR. SNYDER: Understood. Thank you.

22 THE COURT: Go ahead. Okay. Mr. Grey. Go  
23 around that way. Yeah. You know, can we -- he -- he  
24 might --

1                   GOVERNMENT'S WITNESS, FRANZ GREY, SWORN.

2                   THE COURTROOM DEPUTY: Please state your name.

3                   THE WITNESS: Franz Grey.

4                   MR. MAGANA: Permission to proceed, Your Honor?

5                   THE COURT: Yes.

6                   **DIRECT EXAMINATION**

7                   BY MR. MAGANA:

8                   Q               Good afternoon, Mr. Grey. Yesterday you stated  
9                   in your declaration that Deputy Francisco told you that  
10                  he, quote, "had to arrest you"; is that right?

11                  A               Yes.

12                  Q               Now, you rented the U-Haul truck on  
13                  November 14th; is that correct?

14                  A               Yes.

15                  Q               And the deputy arrested you on the evening of  
16                  December 16th?

17                  A               Yes.

18                  Q               So you had that U-Haul for over a month?

19                  A               Yes.

20                  Q               And you had never made any attempt to contact  
21                  U-Haul about it?

22                  A               My phones were out so I couldn't make any  
23                  calls.

24                  Q               But you did have a car; right?

25                  A               Yes.

1 Q And so you could drive to the place where you  
2 had rented the U-Haul?

3 A Like I said on -- people had shot my house up.  
4 So they were trying to rob my house so I couldn't make  
5 it away without them robbing my house.

6 MR. SNYDER: Your Honor, I'm also going to  
7 object. This is beyond the scope and not information  
8 that was conveyed to the officer at the time.

9 THE COURT: Sustained.

10 MR. SNYDER: And I would ask for the last  
11 answer to be stricken.

12 THE COURT: It's stricken. The answer is  
13 stricken.

14 MR. MAGANA: So -- I'll move on, Your Honor.

15 BY MR. MAGANA:

16 Q So you stated in your declaration that you were  
17 concerned that the deputies would be emboldened to enter  
18 your home and that -- if -- if you were taken from the  
19 scene with the door unlocked?

20 A Yes.

21 Q And you had a conversation with Officer  
22 Francisco in which you asked him to get your keys and  
23 your phone; correct?

24 A He asked me to lock the place up first. And I  
25 wanted to get this over with and stop them from

1 searching the house because they were searching for  
2 35 minutes. And I wanted to put a stop to it.

3 Q Well --

4 A So I -- I tacitly agreed it so they would stop  
5 doing what they were doing.

6 Q But you never saw them go into your house;  
7 correct?

8 A I did. I saw them open the door.

9 Q But never saw them go in your house; correct?

10 A Officer Francisco, he took my glasses, first  
11 off. So I couldn't see, so I couldn't get a clear look.

12 Q So you couldn't get a clear look at really  
13 anything that was going on then, could you?

14 A Not a clear look, but I saw them prowling the  
15 yard and searching. And they were asking about meth  
16 precursors. So I just deduct from that what they were  
17 really doing.

18 Q So you didn't have your glasses and you  
19 couldn't really see; correct?

20 A I mean, I can see. That's why I have my  
21 glasses off now. I can see -- I can see fine.

22 Q And -- but you didn't actually see anyone enter  
23 your house until you gave them your consent; correct?

24 A It looked to me like they were going inside of  
25 the house.

1 Q But you said you couldn't see because you  
2 didn't have your glasses?

3 A Not clearly.

4 Q Now, when you and Officer Francisco had this  
5 conversation about his going into your house to get your  
6 phone and keys, his gun wasn't drawn; was it?

7 A No. But when somebody puts a AR-15 to your  
8 head, you're kind of frightened.

9 Q Is it your testimony that someone put an AR-15  
10 to your head, Mr. Grey?

11 A Yeah, closely. Like -- like, 10 feet away.  
12 That's close enough to my head.

13 Q And then one of the deputies pointed an AR15 at  
14 you?

15 A Yes.

16 Q But when you had your conversation with Deputy  
17 Francisco, his gun was not drawn; correct?

18 A No.

19 Q And did he ever threaten to hurt you in any  
20 way?

21 A I've been tortured by deputies in the past and  
22 even on the way back to the station, they said that  
23 they're part of the Rattlesnakes Gang and they -- they  
24 threatened. And they threatened me before. They bashed  
25 my head in the wall before.

1 Q So your testimony right now is that you were  
2 afraid of the deputies?

3 A Yes.

4 THE COURT: Mr. Grey, just answer the questions  
5 that are asked. Listen to the questions and just answer  
6 the questions that are asked.

7 MR. MAGANA: Your Honor, I'd request permission  
8 to play one clip from Exhibit 10 -- defense Exhibit 10  
9 at five minutes and 30 seconds. In just a moment, Alex.

10 BY MR. MAGANA:

11 Q So you didn't tell the deputies that night that  
12 you had a good relationship with the sheriff's  
13 department?

14 A I said I -- with the -- with the sheriff next  
15 door -- the one who lives next door, some of them are  
16 all right. Some of them aren't all right.

17 Q So you didn't tell them that you thought the  
18 sheriffs were cool?

19 A I was trying to diffuse the situation.

20 MR. MAGANA: Would you play time five minutes,  
21 30 seconds on Exhibit 10.

22 (Whereupon, video is played in open court.)

23 BY MR. MAGANA:

24 Q So is your testimony there when you -- that  
25 when you told him, "you guys are always cool," you were

1 lying to him?

2 A Try -- trying to diffuse the situation. When  
3 you have dangerous people that are known to torture you,  
4 you just tell them anything to stop them from torturing  
5 you, again.

6 BY MR. MAGANA:

7 Q And so your declaration is that you asked the  
8 deputies to enter your home now in order to prevent them  
9 from entering later; is that correct?

10 A He said he was going to lock the door. Then I  
11 wanted to stop them from continuing to search.

12 Q Now, you said in your declaration that that was  
13 the reason that -- is it your testimony today that there  
14 was no other reason that you asked them to enter your  
15 cabin?

16 A Yeah. To get the phone, too.

17 Q And that was because you wanted to report  
18 another crime to the deputies; correct?

19 A Yes.

20 Q And you told them that some guys from Lancaster  
21 had shot up your house?

22 A Yes.

23 Q And you told them that part of the reason you  
24 didn't return the U-Haul was, like you said today,  
25 because you were dealing with that shooting?

1 A Yes.

2 Q And you told them you had a video of that  
3 shooting on your phone?

4 A Yes.

5 Q And you wanted to show them that video?

6 A Yes.

7 Q So they needed to get that phone for that?

8 A Yes.

9 Q It was nighttime when the detectives arrested  
10 you; correct?

11 A Yes.

12 Q And you said in your declaration there's an RV  
13 on your property?

14 A What's that?

15 Q I'm sorry. I'll enunciate. You said in your  
16 declaration that there is an RV on your property?

17 A Yes.

18 Q And there were at least two other cars in front  
19 of your residence; right?

20 A Yes.

21 Q One Camaro and one Tesla?

22 MR. SNYDER: Objection. Beyond the scope.

23 THE COURT: Sustained.

24 BY MR. MAGANA:

25 Q Mr. Grey, you have a previous conviction for

1 voluntary manslaughter?

2 MR. SNYDER: Objection. Beyond the scope,  
3 unless this is for impeachment.

4 THE COURT: Sustained.

5 MR. MAGANA: No further questions, Your Honor.

6 THE COURT: Okay.

7 **CROSS-EXAMINATION**

8 BY MR. SNYDER:

9 Q Very, very briefly.

10 So when you say that you couldn't really see,  
11 it was dark out that night; right?

12 A Yes.

13 Q And the light was on inside your house; right?

14 A Yes.

15 Q And so if the door to your home was opening,  
16 could you see the light coming from inside your house?

17 A Yes. Plus, I could hear the music, the volume.  
18 When -- when they'd open the door, the volume would  
19 increase.

20 Q Okay. You mentioned that -- actually, you know  
21 what? Let me ask this one last question: Did Francisco  
22 ever follow up on that report regarding the other  
23 officers?

24 Did you ever hear of someone doing an  
25 investigation, writing a report, filing anything with

1           the sheriff's department?

2       A           None whatsoever.

3           MR. SNYDER: No further -- no further  
4 questions, Your Honor.

5           THE COURT: Anything else?

6           MR. MAGANA: No, Your Honor.

7           THE COURT: Okay. Thank you.

8           The witness is excused.

9           Okay. So we'll need to set a -- a briefing  
10 schedule. And I'll do the same. Since it's their  
11 motion, I'll let the defendant go first. And then the  
12 Government do their opposition and then the reply. I'm  
13 thinking, because of the holidays and everything else,  
14 to have the first brief due in mid-January and then a --  
15 21-days for an opposition. And then maybe 14 days for a  
16 reply after that.

17           We'll set specific dates in the order that goes  
18 out after today's hearing.

19           The -- the one thing I will want from you all  
20 is a -- make sure all your citations to the record are  
21 to the page and line number of the transcript. You  
22 don't need to repeat what is in -- I mean, you can  
23 certainly -- I mean -- and that's going to be a little  
24 repetitive. You can't avoid it, but the idea is to, you  
25 know, take what was heard today and to supplement the

1 briefing that's already before the court based on the  
2 evidence that was presented today.

3                   And then I may or may not have another oral  
4 argument for you guys at that point. I -- after I look  
5 at it or I may just take it under submission at that  
6 point.

7                   Do we have a trial date coming up? Do we need  
8 any sort of waiver or anything like that?

9                   MR. MAGANA: Yes, Your Honor. We currently  
10 have a trial date set for December 12th. The court  
11 previously vacated the pretrial conference.

12                  THE COURT: Yep.

13                  MR. MAGANA: And we would ask for a finding of  
14 excludable time based on the pending motion and --

15                  THE COURT: Okay.

16                  MR. MAGANA: -- in the interest of justice.

17                  THE COURT: Okay. Can you -- well, I need  
18 to -- if it's just based on the pending motion, do I  
19 need to take the waiver from the defendant or can I do  
20 it just on the basis of -- of that? I know that's one  
21 of their grounds. I mean, since he's here, I can take  
22 an oral waiver.

23                  MR. SNYDER: Your Honor, if I could just  
24 briefly be heard?

25                  THE COURT: Yeah.

1 MR. SNYDER: We understand the -- the court's  
2 schedule and -- and understand the exclusions and the  
3 Speedy Trial Act. Mr. Grey is not inclined to waive  
4 and -- and so we would just do it -- I think it would be  
5 based on the pending --

6 THE COURT: Motion?

7 MR. SNYDER: Yeah.

8 THE COURT: Okay. So can I ask the Government  
9 counsel then to just submit a proposed order --

10 MR. MAGANA: Yes, Your Honor.

11 THE COURT: -- based on that? And then --

12 MR. MAGANA: I would just add one additional --

13 THE COURT: Sure.

14 MR. MAGANA: We would add one additional point  
15 in the proposed order, which would be an ends of  
16 justice --

17 THE COURT: Yes.

18 MR. MAGANA: -- as well, just in case the court  
19 rules on the motion and there's still a week or two left  
20 before we get to the trial date.

21 THE COURT: Okay.

22 MR. MAGANA: So that time remains excluded.

23 THE COURT: That's good. Yes, do that. And --  
24 and then we'll go from there.

25 MR. MAGANA: Yep.

1 THE COURT: Go ahead.

2 MR. MAGANA: All right. The other thing I just  
3 wanted to say, just briefly, is I am responsible for at  
4 least multiple weeks of the continuance because we were  
5 originally supposed to have a suppression hearing, and  
6 then I got sick. So I think it's only fair to put that  
7 on the record, too.

THE COURT: Okay. Okay.

9                   And so then can I have the -- then the two of  
10          you at a minimum -- given the scheduling, if we have a  
11          mid-January date -- and is that sufficient time for you,  
12          Mr. Snyder? Or do you need -- given the holidays and  
13          everything else? Do you need -- I mean, I just did that  
14          off the top of my head. Do you want more time to  
15          prepare the opening brief?

16                   MR. SNYDER: I think it should be fine. I have  
17                   a -- a very significant thing on December 28th, which is  
18                   work-related thing.

19 THE COURT: Okay.

20 MR. SNYDER: Maybe what I -- what I could  
21 propose is that we talk among ourselves and --

22 | (Cross-talk.)

23                   THE COURT: I actually would -- usually better  
24 when you guys work it out, the schedule. That works  
25 because I know you guys have trials and stuff in other

1       courts. And -- and although, these days -- until  
2 recently, I was always the second-most junior judge.  
3 For almost ten years, I was the second-most junior  
4 judge. But with all the new judges, I've moved up now.

5                   So now -- now, you know, how -- you all know  
6 that -- that when it comes to trial setting and stuff  
7 like that, if there is a conflict in trials, you defer  
8 to the senior judge, as far as that goes. But usually,  
9 we -- you know, we all talk to each other and get along  
10 and we can work it out among each other, too, if that's  
11 an issue.

12                  But why don't you guys work out a schedule  
13 and -- and -- that works for your schedules, and then  
14 submit that in the proposed order.

15                  MR. SNYDER: Okay.

16                  MR. MAGANA: Yes, Your Honor.

17                  THE COURT: And then -- and I think we'll keep  
18 the record then the way it is, and then we'll go from  
19 there then; okay?

20                  Okay. And thank you.

21                  We're adjourned for the day.

22                  (Whereupon, proceeding adjourned.)

23                  - - -

24

25

## C E R T I F I C A T E

UNITED STATES OF AMERICA :  
vs. : No. CR 23-0031-FMO-1  
FRANZ GREY :

10 I, MARIA BUSTILLOS, OFFICIAL COURT REPORTER, IN AND FOR THE  
11 UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF  
12 CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT TO SECTION 753,  
13 TITLE 28, UNITED STATES CODE, THE FOREGOING IS A TRUE AND  
14 CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED  
15 PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT THE  
16 TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE REGULATIONS  
17 OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

18 FEES CHARGED FOR THIS TRANSCRIPT, LESS ANY CIRCUIT FEE  
19 REDUCTION AND/OR DEPOSIT, ARE IN CONFORMANCE WITH THE  
20 REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

22 | /S/ \_\_\_\_\_ // \_\_\_\_\_

MARIA R. BUSTILLOS DATE  
OFFICIAL REPORTER

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